



[Understanding probate guardianship](#)

[A White Paper by Americans Against Abusive Probate Guardianship](#)

Understanding probate guardianship, Part 1

Overview

Guardianship is the most egregious punishment in our legal system short of the death penalty.

The average citizen knows nothing and has no need to know anything about probate court or guardianship. It is only when guardianship looms as an imminent reality that uninformed individuals become desperate to protect loved ones and assets at risk by the threat of guardianship of a family member.

Typically individuals in this situation depend on information from attorneys, typically attorneys at law that have been relied upon in the past but who may have little or no experience in the world of probate equity court. Hence much of their advice is unfortunately wrong or in some particularly sad cases intentionally misleading. This is the reason that it is so common to see litigants in probate go through one lawyer after another as each successive lawyer disappoints them with their inability to get the justice or results needed to protect their loved one or their assets.

The immense gravity of probate matters is shocking to the uninitiated. It is a bizarre world filled with cognitive dissonance for the average individual who expects the judicial process to be fair and professional when they see the decisions by probate court judges can be based on nothing but whim unsupported by evidence yet devastating to victims and their families.

This informational document is intended to help educate the uninitiated and prepare them for what usually turns out to be many years of emotional pain and outrageous expense and the demise of the family. It is written through the lens of one victim of this system, a dedicated advocate for meaningful and immediate reform of the guardianship system in this country.

History

The concept of guardianship has a very early origin. The literature from Rome at the time of Cicero notes the presence of courts of law procedures to protect the property of incompetent persons; no such provisions were made for protection of the person.

Under our Anglo-Norman legal tradition, the King, acting under the doctrine of [parens patriae](#) was the protector of his subjects and had final say in all cases. While guardianship in England applied both to the person and the estate, the primary purpose of the power was to prevent incompetent (read insane) persons from becoming public charges or squandering their resources to the detriment of their heirs. Clearly, at the beginning guardianship laws were implemented **to protect the public** and family members from harm by the actions of someone who was insane.

American Probate court also has an especially ugly history and pedigree in that it was the primary method used to ruthlessly and viciously enforce slavery until slavery was abolished in 1865.

In the United States in the 1980s this country faced what was referred to as a homeless crisis. Laws were once more passed to protect the public from the intrusion on their lives by undesirables some of whom may have had mental illnesses as well. Since these undesirable homeless people had no assets became the responsibility of the state to deal with them and thus grew the public guardianship industry supported by programs and laws which effectively protect the community from dealing with indigent individuals whether they were sane or not.

In the late 80s and 90s these laws were amended and rewritten to draw attention to what was referred to as the vulnerable individuals in society. These vulnerable individuals were not destitute and many were receiving the benefits of government programs in addition to the wealth that they had accumulated in a lifetime. These individuals with assets were easy targets for predatory guardians whose numbers have increased dramatically and easy pickings for the lawyers who defend those guardians.

The laws then became a mechanism by which incompetent individuals, not necessarily insane or ill, would be the focus of the court's protection and not the community. This subtle but massive change in focus gave birth to **the industry of professional guardianship which was no longer charged with protecting the public from individuals but *protecting individuals* from others who might do them harm or create abuse neglect and exploitation even their own families**. Thus our current laws are directed at controlling the lives of individuals who may or may not have cognitive deficiency of some sort—all at the singular discretion of one judge.

Given the enormous power of owning another human being whose rights have been removed (via letters of guardianship that grant ownership rights to a guardian) and was declared mere chattel by virtue of the court's superficial or conflict of interest slanted assessment of their capacity or competence, the industry of professional guardianship has grown dramatically as our country faces the greatest transfer of wealth in human history from the baby boomers to the next generation.

Like human trafficking, entity theft, Ponzi schemes and other fraud and abuse, guardianship poses enormous risks to anyone with assets and over age of 60 living in retirement states like Florida.

Risk factors for guardianship

In a review of hundreds of cases we have followed the primary risk factors for being caught up in the abyss of abusive guardianship are, in no particular order:

- Family dysfunction especially sibling rivalry
- Disagreement over who should have the power of Attorney or Health Care power of attorney Attorney
- History of a family member receiving or seizing funds in excess of those thought to be due to siblings or relatives
- Age over 60
- Assets of greater than \$250,000 or at a minimum ownership of a home
- Family history of prior litigation
- Living in a court district that creates greater than average numbers of guardianships
- Going before judge who has a history of creating abusive guardianships
- Deceitful or inept legal representation
- Judicial malfeasance or corruption
- Examining committee malfeasance or corruption

Different kind of court

Courts of Law and Courts of equity in most places have been combined into a single legal system, but in Florida probate court functions as a Court of Equity.

It is critically important for any victim or family to understand that **Probate Court is not a Court of Law but rather a Court of Equity**. Rules that govern courts of Law like the criminal courts or even civil courts do not apply in probate guardianship court. [See the difference between equity and law.](#)

The critical differences are that in probate

- There are no juries allowed
- Rules of civil procedure may not be enforced
- Rules of evidence may not apply
- The judge has the ability to ignore statutes and probate rules
- The judge has absolute power as the sole arbiter of equity (read fairness) in his courtroom to do as he pleases in any given case.

- There is no oversight of the Probate court on any meaningful level

The cognitive dissonance of innocent victims caught in the abyss of guardianship abuse is understandable when one considers that in our civics classes in high school (civics is no longer taught in American high schools) we learn about the American jurisprudence system. We believe that our civil rights and property rights will be adjudicated by a court of law. It is a rude awakening to realize that equity and administrative courts like probate do not even resemble the jurisprudence system we were taught to respect in high school. In fact the probate equity court is a little known system poorly understood by nearly everyone that controls huge numbers of innocent lives, vast amounts of assets and answers to no one.

With a single individual judge making such important and far reaching decisions without supervision, the situation can be ripe for corruption, malfeasance and collusion with industry stakeholders.

Incapacity

In the early days of American guardianship the term used to describe an individual requiring guardianship was incompetent. Over the years incompetence became harder and harder to prove. The American Bar Association and others actively pursued another term to describe a person needing guardianship and ultimately they arrived at the word “incapacitated”.

There have been many scholarly articles and books including those written by the American Bar Association attempting to define incapacity. The term is fluid, plastic, contrived and “functional” and it can mean almost anything from slight memory loss to absolute total dementia. It is the critical tool for those in the guardianship industry which allows the creation of countless guardianships for individuals who might otherwise do very well in society without guardianship.

The process of determining incapacity is totally unscientific and is not considered or used in medical diagnostic evaluations. An individual can be determined to be incapacitated by someone with little or no experience or education in the field of cognitive impairment. Although one Physician in the State of Florida is required on examining committees, that Physician is usually a court favorite and does these evaluations for a living and thus he is incited by the next case to judge even the slightest evidence of impairment as a sign of incapacity. Evidence from experts in the field procured by desperate family members contrary to the finding of the examining committee is routinely disallowed by Judges who rely entirely on input from the committee which is composed of their trusted colleagues and accomplices.

Emergency temporary guardianship

A critical inflection point in the guardianship process is the emergency temporary guardianship. A probate judge can, on the slightest suspicion or attestation by a lawyer of abuse neglect or exploitation--oftentimes a fabrication by a fee hungry lawyer-- order an emergency temporary

guardianship. In so doing he instantly and with no due process whatsoever, strips an innocent vulnerable elderly person of older civil rights. **This Emergency Temporary Guardianship (ETG) process immediately seizes all assets and takes a living, breathing person and makes them “dead” as viewed (legally) by the court. Additionally the ETG turns that living, breathing person into property, owned by total stranger** -- their court-appointed guardian.

This process can legally take place in secret and, come as an absolute total surprise to victims and their families. Once in an emergency temporary guardianship, the percentage of individuals able to reverse it or escape it is in the low single digits.

Spotters

Stakeholders in the guardianship industry are well known to employ spotters who receive finder's fees for identifying potential candidates for guardianship. These spotters can be found wherever the elderly can be found at especially in healthcare facilities, senior centers, assisted living facilities and retirement homes. This facet of the industry is referred to as trolling for wards.

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