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# Protecting the Elderly Against Guardianship Abuse

Our instinct is to protect the elderly. When older people become unable to manage their own affairs they need help, and each state has established a process to give them that help. A **guardian** (also known as a conservator) can be appointed to make financial, medical, and housing decisions for a senior who no longer can manage alone. In most cases this is a godsend.

The guardian, often a family member, has authority to act for the senior, so that he or she needn't worry about paying bills, arranging for nursing home care, or **applying for a senior apartment**. The guardian steps in and manages everything.

It's what we all hope someone would do for us – help us when we are no longer able to help ourselves. Unfortunately, it's becoming clear that this system is fraught with **abuses**.



## Decisions powered by money

The guardian is given carte blanche to make all decisions. There is supposed to be oversight by the court, but most states provide only cursory supervision. This means that the guardian gets to decide how the elderly person's money is spent, without checks and balances. With 1.5 million seniors in the **guardianship system** in the United States (and a growing senior population means this number will only increase) and \$273 billion in assets being managed, the potential for exploitation is enormous.

If the guardian is a trusted relative, things are likely to be fine. Not all guardians are relatives, however, and you might be surprised to learn that guardianship is a big business; a huge industry built up of professional guardians—complete strangers—who are appointed by courts to manage the affairs of unwitting elders. In other situations, these professional guardians actually troll for clients, holding **“informational meetings”** about topics of interest to seniors, then homing in on those who seem to be without family support and appear too confused to stand up for themselves.

The professional guardian submits a petition to the court stating that a senior needs a guardian and asking to be appointed—for a fee. It all happens without the senior's consent. And while many of professional guardians are ethical and conscientious, some are not.

## Out of control

When a guardian is appointed, the senior often has to pay not only the legal fees of the case, but also ongoing fees management charged by the guardian, as well as the cost of services provided, such as taking the person to the doctor or supervising visits with family. If the guardian is a family member these fees are usually waived. (Are you going to charge your grandpa to bring him some groceries?) But when a professional guardian is appointed, the entire point is to charge fees.

Often such guardians do not focus on the senior's needs; rather, they find ways to spend more money so that they can collect more fees. There are many cases where a senior's spending triples or quadruples once a professional guardian takes over. For instance, 71-year-old **Linda McDowell** of Vancouver, Washington, found herself with a guardian in charge of her assets after a petition was filed; in the 30 months she was in the “care” of a guardian, most of her \$700,000 in assets were spent without her consent.

The guardian also gets ultimate control over the person's entire life. “I can decide who they see. I can put them in a nursing home,” professional California conservator Frumeh Labow of Complete Probate Administration told the *LA Times*. “It's the biggest imposition on your civil liberties short of being imprisoned.”

## Plan for your own future

These abuses are frightening and highlight a system with little oversight over one of our most at-risk populations. The National Association to Stop Guardianship Abuse (NASGA) is working to change the system. They point out that many state statutes have lowered the standard for determining who requires guardianship, downgrading the criterion from incompetence to incapacity, making it much easier for a guardian to be appointed. **Each state** has its own laws and regulations for this industry, so understand yours.

To completely protect yourself, plan for your future before there is any need for a guardian. **Work with an estate planning attorney** to create a health care directive and health care power of attorney or proxy. These documents allow you to make preemptive decisions about your health care and name someone you trust to make decisions for you should become unable to make them yourself.

Set up powers of attorney, naming people you trust to manage your financial and legal affairs on your behalf beginning today or at a point in the future when you are unable to do so. You may also consider a **living trust**, which can provide complete management of all of your assets according to your instructions.

The guardianship system offers many benefits to needy seniors, but the abuses make it clear it is better to plan for your own future when possible.

**Written by Brette Sember**

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