Florida's Guardianship Laws: A License to Exploit the Elderly, Disabled and Veterans who have Proudly Served America

It happens frequently and often in Florida. A middle aged man in great health suddenly suffers a stroke incapacitating him and requiring physical therapy for the rest of his life. An elderly woman is found unable to care for herself. Someone takes financial advantage of an elderly man teetering close to his retirement savings being wiped out. Their conditions have deteriorated to the point that a person is unable to manage his or her own affairs. As a result, someone – a family member or another person – has to end up taking charge of the person's affairs. This process is known as guardianship, and guardianship is supposed to take care of a person's affairs when he or she cannot due to a disabling physical or mental condition.

Unfortunately, guardianships in Florida can become difficult. For instance, a family member petitions the court for guardianship but the court ends up handing guardianship to a total stranger. Or, your loved one had to go to the hospital and the hospital's social worker – or worse, Adult Protective Services – ends up filing an emergency guardianship petition. As a result, a total stranger – a/k/a professional guardian – is in control of your loved one's affairs and the guardianship was not the guardianship you hoped for. With this in mind, this is what this white paper is all about.

Disclaimer

While I have an Associate in Science degree in Legal Assisting, it needs to be emphasized that *none of what is presented in this white paper is to be construed or taken as legal advice*. In other words, this white paper is ***not*** legal advice and, not being an attorney, I am ***not*** allowed to do so.

In any guardianship case, consultation with an attorney that is licensed by the Florida Bar and is certified in Probate Law and/or Elder Law is highly recommended. You can find an attorney that specializes in Probate Law in many ways, including the Internet. Most attorneys will give you a consultation ranging from 30 minutes to an hour, either over the telephone or in person, free of charge. Take the time to check the attorney's qualifications and experience and find out what the fees are going to be before you sign the retainer contract.

Guardianship Defined

The Pinellas County Clerk of the Circuit Court defines guardianship as *a legal arrangement under which a person (the guardian) has the legal right and duty to care for another (the ward) and his or her property*.

In a guardianship, there are two key players: The Guardian and the Ward. It is the Guardian who oversees the legal, financial and other affairs over a person who is the subject of a guardianship called the Ward, which is always under the supervision of the Probate

Court. On the other hand, the Ward is the incapacitated person who, by reason of physical or mental disability, is incapable of managing his or her own affairs.

Guardianships are always under the supervision of the Probate Court which is responsible for seeing that the affairs of the Ward is being managed properly and within the law. Attorneys represent both the Guardian and the Ward, and it is the attorneys that are the interface between the Guardian/Ward and the court. It is the attorney for the Guardian that conducts the required accountings and reports to the court, while the attorney for the Ward represents the Ward's best interest, especially if something goes wrong.

Guardians can be of the person, the property or both. There can be one guardian overseeing both the person and the property or a guardian overseeing just the person and another guardian overseeing the property.

How a Guardianship is Created

In order to explain how a guardianship is created let's go through an example of which guardianship is justified. The law and procedure are governed by Chapter 744 of the Florida Statutes.

Here is a 33 year old man, in great health, has a great job, and he works out regularly at the gym. He has a wife and one daughter as his family. So far, things have been positive for the family: The daughter is in private school as a senior making excellent grades and on track for graduation, the man just received a promotion at work, and the wife works part time with an eBay and Amazon related business out of home.

Until one day at work, right after the 12 Noon to 1 PM lunch break. The man is settling in back at his desk going over the contracts that have to be done. All of a sudden – with very little warning – the man has the worst headache of his life and he ponders leaving for the day. As the headache worsens, the man gets up from his desk to take some medicine and – just after getting up – he fell down to the floor. His co-workers rush to his aid and call 911 for medical assistance. Paramedics show up within minutes of the 911 call.

The paramedics evaluate the condition of the man and, after careful checking, determine that he needs to be transported to the hospital with an advanced stroke unit, as the man may have suffered a stroke so severe that extensive rehabilitation will become the norm. At the hospital, the physicians do their evaluations and administer emergency treatment for the stroke; the man is taken to the hospital's intensive care unit.

The man's supervisor calls the man's wife at home and explains what happened. The wife rushes to the hospital and sees her husband – this time, in the intensive care unit hooked up to many machines. The physicians take the wife to the side in a side room not too far from where the husband is and give the bad news:

Your husband has had a severe stroke at work. The good news is that we were able to save your husband. However, the bad news is that, based on the damage done the stroke your husband suffered is so advanced that he is going to need extensive rehabilitation and assisted living for the rest of his life.

This is no news one has to hear. In fact, receiving this kind of news is very painful and depressing.

A day later the wife makes an appointment with and meets with the family attorney. The wife explains what happened at work and what happened in the hospital with the not-so-good prognosis that he will need specialized nursing care for the rest of his life. Being sympathetic, the family attorney refers her to an attorney who he knows specializes in Probate Law including guardianships. So, the wife makes an appointment with and meets with the probate law attorney.

The first thing the attorney will ask if there are any advance directives. Advance directives include documents such as a Durable Power of Attorney, Designation of Healthcare Surrogate, Living Will and a regular Will, not to mention a Declaration of Pre-Need Guardian. In this case, none of these documents were drawn up.

But what if there were these advance directives drawn up earlier? The attorney would advise the wife that everything would be governed by the advance directives that were drawn up. In that case, no guardianship proceeding would be necessary. After a good hour and a half meeting it is decided that guardianship would be the way to go, given what happened and no advance directives drawn up. Besides, advance directives can only be drawn up while a person is mentally competent to do so.

However, a Declaration of Pre-Need Guardian is a good safeguard especially if a guardianship is truly needed. In the event a petition for guardianship is filed with the probate court, the Declaration of Pre-Need Guardian establishes one's wishes as to who would be guardian if the need arises.

Here in Florida, the paperwork for initiating a guardianship case can only be filed by an attorney, not the person seeking guardianship (known as the petitioner). This acts as a safeguard to prevent a person who is not an attorney from filing a frivolous or unwanted guardianship; that is, to try to get access to substantial amounts of money and/or property.

The attorney will file two petitions along with the filing fee as prescribed by the Clerk of the Circuit Court: A Petition to Determine Incapacity and a Petition for Appointment of Guardian.

First will be the Petition to Determine Incapacity. This is a petition to the court that the petitioner has reason to believe that the respondent – called the alleged incapacitated person – is incompetent to handle his or her own affairs. The petition contains the name of the petitioner, the name of the alleged incapacitated person along with the factual information giving rise to the petition, the names and addresses of witnesses that know the facts surrounding the case, a list of activities of which the alleged incapacitated person is incapable of, the fact that the petitioner is seeking either a plenary or a limited guardianship, the names and address of the alleged incapacitated person's next of kin and the name of the alleged incapacitated person's own doctor.

The Petition to Determine Incapacity also asks if there are any advance directives such as trust agreements, durable powers of attorney, designations of health care surrogate

or any other advance directives. Unless good cause is shown, probate judges would more than likely defer to the advance directives rather than granting a guardianship.

Let's stop here for a moment. Guardianships are of two types in Florida, a plenary and a limited guardianship. A plenary guardianship is a guardianship where the ward is completely stripped of his or her civil rights, while a limited guardianship is a guardianship where certain rights are retained by the ward. We'll get into the rights of a ward later.

Second will be the Petition for Appointment of Guardian. This is a petition to the court that if in the event the alleged incapacitated person is adjudged incapacitated, the person listed on this petition should be appointed guardian. Depending on the circumstances, there can be a guardian for the person, a guardian for the property of a person or a guardian for both the person and his or her property. In our case, the wife is named as the proposed guardian.

As in the Petition to Determine Incapacity, the Petition for Appointment of Guardian asks if there are any advance directives such as trust agreements, durable powers of attorney, designations of health care surrogate or any other advance directives. Again, unless good cause is shown, probate judges would more than likely defer to the advance directives rather than granting a guardianship.

Once the paperwork is filed, a formal notice – called a Formal Notice of Petition to Determine Incapacity – is served upon the alleged incapacitated person by the court appointed attorney representing the alleged incapacitated person in a capacity known as an elisor. This notice informs the alleged incapacitated person of the date and time a hearing will be held as to the person's alleged capacity to exercise his or her rights as far as day to day living is concerned and the elisor has to personally read the notice to the alleged incapacitated person. Proof of service is given to the court.

At the same time, the judge will issue an order establishing an examining committee that will be charged with examining the alleged incapacitated person and making the findings to the court. By Florida law, three persons serve on this committee: A physician, a psychiatrist, and a lay person. In order to be impartial, no one that knows the alleged incapacitated person – such as the person's own doctor – may serve on the committee. However, the person's own doctor must be consulted and the person's own doctor may offer evidence to the examining committee for their review.

In our case, the husband with the severe stroke is given the mandatory examination done by the committee in the hospital. Medical and mental assessments are performed within strict guidelines laid down by the medical profession, and this is why a lay person (such as a social worker) is involved. The scope of the assessment involves discussions with doctors including the ER doctors that stabilized the husband upon arrival.

Once the assessments are completed, they are summarized into a report that will be given to the judge in making the decision that a person is indeed incompetent. The report will contain, among other things, a list of capacities that the person is capable or incapable of as well as recommend whether the guardianship be plenary (complete loss of all rights) or limited (loss of certain rights). The judge will go over the report and make a decision as to

whether the alleged incapacitated person is incapacitated or not. A hearing is scheduled to make this decision.

At this point, the outcome can be one of two orders made by the judge: The alleged incapacitated person does not meet the criteria for guardianship or the alleged incapacitated person is indeed incapacitated and a guardian is necessary.

If it is ruled that the alleged incapacitated person is not incapacitated, the judge will issue an order that the petition to determine incapacity and appointing a guardian is denied, and everything is over with then and there. This can happen, especially if the judge finds that there is a less restrictive alternative to guardianship such as a Durable Power of Attorney as evidenced in the two guardianship petitions mentioned earlier. Probate judges will not approve of a guardianship unless it is absolutely necessary.

On the other hand, if it is ruled that the alleged incapacitated person is indeed incapacitated and incapable of handling his or own affairs, the judge will rule that the person is incapacitated (more known as adjudicated incapacitated) and move forward with the appointment of the guardian as shown in the Petition for Appointment of Guardian. At this point, the alleged incapacitated person's legal status has changed from an adult to a ward of the State of Florida.

Going back to our case here, the husband is declared incapacitated due to the nature of his illness being the severe stroke he suffered at work. There was no durable power of attorney found and no other advance directives were found, as these documents were never executed to begin with. As a result, the wife is appointed the husband's guardian for both the person and the property.

The judge will issue Letters of Guardianship that give the guardian exclusive authority over the affairs of the ward. But that's not over, as guardianships are supervised by the court after they are initiated.

Responsibilities of a Guardian

Once appointed, the guardian has a fiduciary responsibility to the ward. This responsibility extends to the property of the ward as well as the ward himself or herself.

Guardians that are family members have less onerous requirements such as bonding. However, if the guardian is a person that is in the business of making a living from managing a person's affairs, this would be a private professional guardian and, as such, professional guardians are subject to rigorous background checks as well as having to post a bond.

A background check for any guardian – regardless if it's a personal (non-professional) or a professional guardian – is not just querying the database of the Florida Department of Law Enforcement's (FDLE) public criminal history site. Fingerprints have to be taken and are electronically transmitted not only to FDLE but to the FBI for a national criminal history check (to see if there are any offenses committed outside Florida) as well as the Florida Department of Children and Families to see if the proposed guardian is on Florida's abuse registry.

A guardian's responsibility does not stop when the judge issues the order appointing a guardian for an incapacitated person. The court requires initial and annual accountings of property that belongs to the ward, plus care plans and anything else that the court may require. For this reason, bank accounts would have to be re-titled or opened and maintained separately from the guardian's own personal bank account; this prevents any commingling of funds. Furthermore, the guardian is responsible for the welfare of the ward the guardian is entrusted to, which includes medical care, assistance with everyday living, and more. After all, everyday living is what you and I take for granted.

Rights of the Ward

Once a person's legal status changes from that of a free person to that of a ward under guardianship, the rights of a ward can be summed up in just one sentence:

A ward has much less legal rights than a convicted felon.

Here is a list of the rights that are taken away from a person once a judge declares an alleged incapacitated person incapacitated and a guardian is appointed. Note that this list is not all inclusive; limited guardianships may involve just a few rights taken away. When all rights are taken away, the guardianship is a plenary guardianship.

Marriage
Voting
Right to Travel
To contract
To sue and be sued
Possession of a Florida Driver License
Where the ward may live
To look for or keep a job (seek or retain employment)
To consent to medical treatment
To personally apply for government benefits
To manage property or to make any gift or disposition of property
To make decisions about his or her social environment or other social aspects of his or her life
The right to own or possess a firearm

And the list goes on and on…

In other words, guardianship changes a person's civil rights in a heartbeat. This means, among other things, the loss of a Florida driver license, the loss of the right to vote, the loss of where one determines where to live, and the loss of a job depending on whether the guardianship is a plenary or limited guardianship. In the guardianship cases I have examined online at the Pinellas County Clerk of Circuit Court's website, when a judge grants a guardianship I have noticed that the judge suspends the Florida Driver License of the ward as part of the proceedings.

Moreover, the Ward's name is sent to the Florida Department of Law Enforcement (FDLE) for inclusion into their mental competency (MECOM) database. This information is transmitted to the FBI for inclusion into the National Instant Check System (NICS), which

renders the Ward unable to purchase or carry a firearm. Likewise, any concealed weapons permit held by the Ward is taken away.[1]

In our example presented earlier, the probate judge awards guardianship to the wife, who becomes the guardian of the husband that had the stroke. However, if there was no one qualified and willing to serve then the court would appoint a person who makes a business out of overseeing the assets and activities of a number of wards for profit called a private professional guardian. Unlike a family member that is appointed guardian, professional guardians have onerous requirements including bonding among other things. What makes this scary in Florida is that a professional guardian, looking for the next cash cow, will make motions to the court alleging that the proposed guardian is not fit to serve, nine times out of ten based on perjured facts.

Should guardianship be ordered and the judge ends up awarding guardianship to a professional guardian, then the professional guardian can do anything he or she wants as far as the ward's best interest is concerned. For instance, a professional guardian can cut off all contact with the ward's family and relatives and mandate placement in a care facility such as an Assisted Living Facility, as what happened to a Clearwater Beach woman in 2009.

Carol Kinnear: A Case of Guardianship Gone Wrong

Here is a story of a Clearwater Beach woman who was stricken with Alzheimer's Disease and wanted to live out her last days in the comfort and security of her own home. I know, it is very heart breaking when your loved one has a terminal illness such as Alzheimer's and you want to provide the best possible so that when the time comes that your loved one passes away, at least your loved one got his or her wishes.

In a *Tampa Bay Times* article[2], Carol Kinnear owned a multi-million dollar home out on Clearwater Beach where she wanted to live out her last days. After all, when the home that you lived in happens to be the home you grew up in or lived there a long time, it takes on a special meaning not only for you but for your relatives as well.

Carol had a trust drawn up earlier and she had it amended so that she can live out her last days at home. However, Carol's relatives wanted to make sure that the estate was preserved. As such, papers were filed for a member of the family to become Carol's legal guardian; however, once the court approved the guardianship the legal guardian for Carol was none of her relatives – instead, it turned out to be total strangers. According to the *Times* article, Carol's legal guardian – a professional legal guardian whose name is Teri St. Hilaire – had her removed from her home and taken to a facility, all against Carol's wishes. To make matters worse, Carol's legal guardian even barred her relatives from even seeing her.

BIG MISTAKE! *Imagine this: An American native born citizen kidnapped on American soil by agents of a foreign country for no reason (for instance, let's say the Democratic People's Republic of Korea, commonly known as North Korea). The agents end up flying the American to North Korea, a country where entry by foreigners is difficult if yet impossible for*

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[1] Section 744.331(6)(a) of the Florida Statutes.

[2] *Legal Guardian denies Alzheimer's patient her home and family contact*, *Tampa Bay Times* article written by Drew Harwell, 20 August 2009.

Americans. If you are an American wanting to plan a trip into the virtually closed prison-like authoritarian dictatorship of North Korea, good luck on getting a North Korean visa – the US State Department considers travel to North Korea by American citizens non-routine.[3] *Besides, you have to end up flying to China and getting your North Korean visa at their embassy in Beijing. (Not to mention getting a Chinese multiple entry visa as well as having the required validation in your United States Passport, as it is prohibited for American citizens to travel to North Korea (as of 2025) without the requisite validation*[4]*).*

Sound scary? Well, this is what happens in a Florida guardianship case in which a professional legal guardian is appointed against the family's wishes. The "agents" here are not representatives of a foreign country – instead, it is a total stranger appointed by the court known as a professional guardian. This is legalized kidnapping by the State of Florida in the name of guardianship.

How Guardianship can become a hassle in Florida

Guardianship in Florida can become a complete nightmare once you file the petition to have someone declared incompetent in court. In Carol Kinnear's case when the capacity hearing was held apparently a professional guardian - waiting to find their next "victim" - exploited a loophole and questioned the proposed guardian for Carol by filing an objection to the proposed guardian, which was supposed to be a family member according to the *Tampa Bay Times* article.

Having a clean criminal record is not just enough: Other obvious reasons can range from being on Florida's abuse registry maintained by the Florida Department of Children and Families to civil actions such as divorces and being the recipient of a domestic violence restraining order. In other words, these professional guardians look for anything and everything to keep that family member from being appointed guardian.

Moreover, if you have ever been arrested, a criminal record is started on you as far as Florida is concerned. This will stay with you the rest of your life, even if the state attorney drops the charges, the court finds you not guilty, or you plead guilty or no contest with adjudication withheld. Even if you go through the hoops with the Florida Department of Law Enforcement to seal and/or expunge your criminal history, that sealed and/or expunged record will still be available somehow. Again, one blip on your criminal history can potentially keep you from being appointed guardian.

If you were Baker Acted for any reason, don't believe that your stay in a treatment facility under the mandatory up to 72 hour hold pursuant to the Baker Act is confidential. Certain aspects of what happened can potentially turn up in a background check. Same thing if you ever had a restraining order entered in court against you: Even though a restraining order – called an Injunction for Protection – is a civil matter, certain aspects of that restraining order can show up in a background check. And, of course, criminal violations of a restraining order *will* show up in a background check as well. Besides, a restraining order is a matter of public record no matter what.

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[3] US State Department Travel Information Sheet for North Korea, retrieved 31 January 2025. Since 2017 US citizens are not permitted to travel to North Korea unless a special passport validation is issued, which is mainly non-routine.

[4] See https://travel.state.gov/content/travel/en/passports/how-apply/passport-for-travel-to-north-korea.html

Did I mention the Florida Department of Children and Families? Well, I got bad news for you parents out there that got arrested for or had an interaction with Child Protective Services on an allegation of child abuse: Even if the state attorney drops the charges, you are still on the Florida DCF's radar as far as abuse, neglect or exploitation is concerned. Your name is still on the Florida abuse registry even though the criminal charges are over and your name can come up in a background check if a background check including the Florida abuse registry is ordered. Speaking of the Florida abuse registry, good luck trying to get your name expunged: It is almost impossible.

If you ever get called to your child's school and you are met by Florida DCF investigators (Child Protective Services) and law enforcement in your school's conference room along with the school principal, welcome to a lifetime of harassment and intimidation by DCF. After all, it takes just one report of suspected child abuse for a lifetime of DCF harassment which can impact you later on in life.

Same thing with Adult Protective Services: If you ever had an interaction with a DCF Adult Protective Services investigator alleging financial exploitation or elder/disabled abuse, and the allegations were sustained in any way irrespective of any criminal court proceeding, your chances of being appointed a guardian are very slim, if not nonexistent. Same thing if you have been named as a respondent in an Elder Exploitation Injunction.[5]

Now we have a professional guardian appointed and involved: A complete and total stranger; someone that you do not know. There are professional guardians out there that *do* care about the wards under their care; unfortunately, there are the "bad apple" professional guardians that seldom express an interest in caring for the ward that the guardian is supposed to protect. In other words, the "bad apple" professional guardians putting their own interest first before the ward's: According to an interview with Nina Kohn, a law professor at Syracuse University and a distinguished scholar in elder law at Yale Law School by Melissa Hellmann of the Center for Public Integrity, if a guardian says "I'm going to make whatever decision is easiest for me", that could be abuse by a guardian.[6] [7]

Professional guardians do it for the money. A ward with plenty of assets – upscale home, tons of money in banks and brokerages – is fertile ground for a professional guardian. Let the isolate, liquidate and medicate games begin.

Once the professional guardian finds out the exquisite assets of the ward, bingo - the professional guardian struck a gold mine. As soon as the judge signs the guardianship papers including the Letters of Guardianship the professional guardian can go on an asset wasting spree, using the assets fraudulently obtained for the professional guardian's *own* benefit:

1. ***Isolate and medicate:*** Removal of the ward from the home that he or she has lived in for many years, perhaps all of his or her life. The ward is then placed in an institution – usually a care facility such as a nursing home or an assisted living facility, often times in a

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[5] Sections 825.103 and 823.1035 of the Florida Statutes.

[6] See https://publicintegrity.org/inside-publici/newsletters/watchdog-newsletter/autonomy-guardianships-threaten-rights/

[7] An example of this can be seen in the Lifetime TV movie *The Bad Guardian* (2024): The professional guardian makes a decision to amputate the foot of the ward under the guardian's care when there was no need due to the ward's medical condition.

locked memory care unit – located far away from where the ward's relatives live. Get a court injunction prohibiting family from visiting the ward.

2. ***Liquidate:*** Once the ward is placed somewhere far away, the professional guardian gathers all assets together (which is called marshalling the assets) and sells the house right under the ward, with the court's approval. Proceeds from the sale pay off the mortgage (if there is one) and the remainder of the proceeds go to the professional guardian for his or her own personal benefit. Don't forget the personal possessions that are in that house. Don't forget any automobiles owned by the ward (pay off any outstanding liens such as auto loans first).

Next, the bank and brokerage accounts. Go to every bank, credit union or brokerage where the ward has accounts and loot the money. Once you got everything deposit it in your own personal bank account instead of the restricted depository bank account mandated by court order that is supposed to be for the ward's benefit.

Spend down as much of the ward's assets as you can on that care facility until the bank accounts run dry. Once all the finances are drained the ward will become indigent. Collect as professional guardian fees enough money to pay your mortgage and your luxurious style of living.

At the same time, apply for Medicaid on your ward's behalf once the finances are drained.[8] Same thing for Social Security Supplemental Security Income (SSI) and any other Social Security benefits the ward is eligible for and file paperwork with the Social Security Administration to make yourself Representative Payee. Once you are made a Representative Payee, divert the Social Security funds into your own personal bank account instead of that restricted depository bank account mandated by court order as well as Social Security that is supposed to be for the ward's benefit.

3. ***Required accountings:*** Professional guardians (as well as regular guardians) have to file initial and annual accountings with the court. Just falsify the paperwork to make it look good - perjury is common in guardianships, especially guardianships run by the "bad apple" professional guardians. Besides, the "bad apple" professional guardians and their attorneys work together as a team. If Social Security benefits are involved, accountings with Social Security are mandatory – again, just falsify the paperwork to make it look good.

4. ***When the ward passes away:*** If the ward passes away, the guardianship is over. As the ward now has no assets for funeral expenses, the state takes care of the funeral arrangements. The family of the ward is kept in the dark until many years later, if ever.

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[8] According to an article by Josephine Yang-Patyi and Anthony Marrone II in *Provider* magazine, once a petition for guardianship is filed a Medicaid application is filed on the basis of no income and no assets as the Alleged Incapacitated Person (AIP) loses access to the income and assets when the guardianship petitions are filed in court. However, in the case of *Foster v. Radulovich* which was decided in the Florida Second District Court of Appeal (Case No. 2D20-2988 Fla. 2nd DCA 2021, decided 17 December 2021) the court has made it clear that until the person has been adjudicated to have lost their rights, the person retains them.

A guardianship can be commenced against anyone without any warning. This has happened to unsuspecting people, especially the elderly and the disabled as well as anyone who has been in the United States Armed Forces that honorably served America[9].

For example, a person could be transported to the hospital for even a minor condition and the hospital's social worker (or even a discharge planner) gets involved. The hospital social worker, knowing the patient's condition, has the hospital file (through an attorney, either on the hospital's staff or an outside attorney on retainer) not only the regular Petition to Determine Incapacity and Petition for Appointment of a Guardian but – due to the lead time between filing the petition and the court hearing – a Petition for Appointment of an Emergency Guardian is filed. The Petition for Appointment of Emergency Guardian basically contains the same information as the regular Petition to Determine Incapacity and the Petition for Appointment of Guardian but the emergency guardianship petition states that a regular petition was filed and a guardian was not appointed yet. Moreover, the petition states that immediate danger to the respondent which, according to Section 744.3031 of the Florida Statutes, *that there appears to be imminent danger that the physical or mental health or safety of the person will be seriously impaired or that the person's property is in danger of being wasted, misappropriated, or lost unless immediate action is taken* will result and where the information is coming from.[10]

Unfortunately, nine times out of ten the Petition for Appointment of an Emergency Guardian is based on untrue facts. These emergency petitions are a fast track to guardianship, with a professional guardian standing ready to find out what kind of assets the respondent has and what kind of family the respondent has as well. Once the orders are signed by the judge it gives the professional guardian free rein on practically everything while waiting for the regular guardianship petitions to be heard.

The same thing goes for Adult Protective Services. A person could be transported to the hospital, again for what seems to be a minor condition, and hospital staff finds out that the person has been neglecting himself or herself (medical self-neglect). A report is made to Adult Protective Services and based on the report the Adult Protective Services investigator ends up filing the Petition to Determine Incapacity, Petition for Appointment of Guardian and the Petition for Appointment of an Emergency Guardian. Unfortunately, the hospital nine times out of ten bypasses the Adult Protective Services route – instead, the hospital on its own initiative (with the assistance of legal counsel) bypasses Adult Protective Services and file the necessary petitions for guardianship with the court as mentioned previously.[11]

Adult Protective Services isn't just confined to the hospital. Suppose you are on serious medication – say, Type II Diabetes – and you do not refill your medications. That friendly pharmacist at your neighborhood drug store can potentially make a report to Adult Protective Services, citing medical self-neglect. Same thing goes for financial institutions such as banks and credit unions: Let's say you withdraw $25,000 and give it to your granddaughter so that she can finish college. Right after you make that withdrawal, that

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[9] *Vets lose benefits as VA covers up mistake*, 10 News (WTSP-TV) story by Mike Deeson, 29 April 2011

[10] Section 744.3031 of the Florida Statutes.

[11] *Hospitals Seeking to Strip Away Patients' Rights, I-Team Investigation Finds,* report by ABC Action News reporter Adam Walser, 16 December 2019.

way over eager teller or branch manager makes a report to Adult Protective Services, citing financial exploitation.

All that Adult Protective Services does, instead of helping the elderly and disabled as they are supposed to do, is one thing: Develop a case for guardianship, especially emergency guardianship. Like its children counterpart Child Protective Services, develop a case to destroy a family.

Now if you look on a Petition for Appointment of an Emergency Guardian, there is a paragraph that is quite disturbing: ***Petitioner is an adult interested in the welfare of the alleged incapacitated person***. That means anyone – a social worker from a social services organization, a hospital, a financial institution or even Adult Protective Services – can file an emergency petition based on untrue facts. Just be sure there is attorney representation when the petitions are filed.

There is also a requirement that the emergency guardianship petition be served on the alleged incapacitated person within 24 hours but there is a dangerous caveat: The petitioner can demonstrate that substantial harm to the alleged incapacitated person could occur if that 24-hour notice is given, which is why emergency guardianships are sprung upon someone without any warning or notice whatsoever.[12]

Emergency guardianships are supposed to last for 90 days, pending the outcome of the permanent guardianship hearing. This 90 day window gives guardians – especially professional guardians – a jump start on looting the finances of the incapacitated person. However, if the guardianship transitions from the temporary 90-day emergency guardianship to a regular guardianship, things can change in a heartbeat.

How Long do Guardianships Last?

It can be summed up in one word, especially if a professional guardian is involved: ***FOREVER***.

A ward has the right to petition the court for review of competency by filing a Suggestion of Capacity petition with the court if the ward has recovered to the point that the ward can manage his or her own affairs once again. In reality, it does not happen as professional guardians – along with their attorneys – have at their disposal a psychiatrist that will give perjured testimony that the ward cannot manage his or her own affairs. After all, a ward with significant assets is a professional guardian's working cow, managed for the professional guardian's *own* personal benefit, not the ward's.

Once the ward passes away, the professional guardian goes to work on finding his or her next victim. And the cycle keeps going and going, all legalized and sanctioned by the State of Florida under the guise of Florida's guardianship laws as codified in Chapter 744 of the Florida Statutes.

Same thing with Baker Act patients too. Chapter 394 of the Florida Statutes deals with Florida's Baker Act, Florida's involuntary mental health commitment law. Towards the

[12] Section 744.3031(2) of the Florida Statutes and Florida Probate Rule 5.648(b).

end of the 72 hour mandatory hold period, the administrator of the facility where the patient is committed will, along with the facility's psychiatrists, give perjured testimony that will keep a patient in the facility at least six months, if not indefinitely. The reason? Do it to collect the insurance. Just do it for the money. Make it better when a guardian (called a guardian advocate), particularly a professional guardian, is appointed during the Baker Act hearing.

This has happened to the family of Navy veteran Jimmy Johnston where he was admitted to Morton Plant Hospital in Clearwater only to be committed against his will thanks to Florida's Baker Act. When Jimmy Johnston passed away in March 2021, the family was left with a hospital bill totaling $1.2 million. This was, in my opinion, clearly a case of "do it for the money."[13]

Do it for the money it is. When a hospital finds that a patient has insurance, the hospital has struck a goldmine: Get a guardian advocate – especially a professional guardian advocate – for Baker Act under Chapter 394 and maximize that six month hospital stay to maximize the insurance payout. At the end of six months, go back to court to keep the patient in the hospital for yet another six months. Now the hospital – as well as the appointed professional guardian advocate – has an assured source of income, profiting off of the patient's insurance.

What can you do to see that your loved one gets his or her wishes?

KEEP YOUR LOVED ONE OUT OF PROBATE COURT!
KEEP YOUR LOVED ONE OUT OF A CARE FACILITY LIKE A NURSING HOME!
DO NOT FILE FOR GUARDIANSHIP IN THE VERY FIRST PLACE!

Probate court is when your loved one passes away and does not have a will. Of course if your loved one has a will it will make things much easier in probate court – a will determines who you say will get your property, not the State of Florida or your home state.

Second, you and your loved one should have a conversation with your attorney, one that is licensed by the Florida Bar and that specializes in elder law as well as wills, trusts and probate. There are many ways that you can provide for your loved one without having to resort to the court system, and your attorney can help you in that regard.

While we're on the subject of attorneys, do you happen to have the following documents as advance directives?

Durable Power of Attorney
Designation of Healthcare Surrogate
Living Will
Will
Declaration of Pre-Need Guardian

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[13] *Local Hospital uses court to keep patient for a year, charges $1.2 million in medical bills,* report by ABC Action News Investigative Reporter Adam Walser, 17 January 2022. According to that article, a professional guardian advocate was initially appointed but in December 2020 a relative, Kathleen Johnston, became Jimmy Johnston's guardian while doctors continued to fight Jimmy Johnston's release.

If you do, congratulations! Consider scheduling an appointment with your attorney to review these documents and make changes as needed. However, if you *don't* – now is the time to make an appointment with your attorney to have these important documents drawn up. You'll be glad you did later. Besides, it's way *less* expensive than a guardianship.

Third, unfortunately there are attorneys out there that say that guardianship will preserve the assets. If your attorney says so, *find another attorney immediately*. Guardianship is not intended for nor the cure-all for asset preservation; instead, guardianship is for people who have lost the ability to manage his or her own affairs by reason of illness, whether it may be physical, mental or a combination of the two and for where no advance directives were prepared.

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Once a petition to determine capacity is filed with the court it is really the end of your loved one's relationship. A "bad apple" private professional guardian can exploit loopholes and soon enough end up having control of your loved one's personal and financial affairs.

Besides, people who got served with papers determining a person's capacity to manage his or her own affairs have gone to major extremes to save their dignity and respect such as leaving the State of Florida or going as far as leaving the United States and eventually renouncing American citizenship. Renunciation of American citizenship is a gravely serious matter.

Did I mention renunciation of American citizenship? The major reason Americans renounce their citizenship is because of tax concerns as the United States taxes you, Mr. and Mrs. American Citizen, on your worldwide income, not just income earned in the United States. There are other reasons Americans go overseas and give up their citizenship; one person involved in a child custody dispute as a result of a bitter divorce ended up renouncing his American citizenship in New Zealand when he tried to renew his American passport only to find out that, due to warrants out for his arrest on contempt charges related to the divorce, he would be issued a limited validity passport that would only be valid for the immediate return to the United States.[14]

In theory, a person served with a formal Notice of Petition to Determine Incapacity and for the Petition of Appointment of a Guardian could escape the wrath of the court and the examining committee by purchasing a round trip airline ticket to a location overseas, preferably Europe, and renouncing American citizenship (and get a refund on the return leg of the airline ticket) once there. The only major drawback is that unless one has citizenship of another country, renunciation of American citizenship can result in statelessness and the United States allows it. A less drastic alternative is leaving the State of Florida for another

[14] See Harmon Wilfred's web site, LuminaDiem.com, at http://www.luminadiem.com – this is the story of a whistleblower who exposed corruption within the US Government which resulted in an incredible hardship on Harmon's personal and professional life, and went to New Zealand in order to begin rebuilding his life including renouncing his American citizenship when he ran into problems with the US State Department regarding renewing his passport.

state in the United States like Georgia for instance; Georgia has guardianship laws which make it more difficult to obtain guardianship on an individual (Georgia requires one to exhaust all other alternatives first before pursuing a guardianship; if the guardianship petition is denied in a Georgia court then a guardianship petition cannot be filed again for a period of two years unless good cause is shown).[15]

As mentioned previously, there are alternatives to guardianship out there – such as a durable power of attorney and a delegation of a health care surrogate, not to mention a living will – that can be considered. As such, consultation with an attorney is highly recommended and encouraged to see what can be done for your loved one. And if the ultimate happens and someone files a Petition to Determine Incapacity – a regular petition (as well as an emergency petition, if filed) – against your loved one, get an attorney fast as time is working against you.

Speaking of if the ultimate happens and guardianship petitions are filed against you, the court appoints an attorney to represent you and you are allowed to substitute the court appointed attorney for your own. *If finances permit, do so. Make sure that you find an attorney that specializes in guardianship defense/unwanted guardianship/predatory guardianship.* A good guardianship defense attorney should subject the members of the three person examining committee as well as the petitioner to having to give a deposition under oath among other things.

Epilogue

Guardianships are meant for people who have lost the ability to manage their personal and financial affairs due to a physical and/or mental incapacity and for where no advance directives were executed. Guardianships are not meant for people to exert personal and/or financial control over a person, especially a person who is of sound health. Guardianships are not the cure-all for the person who spends money unwisely; however, if the activities cause concern for the person's welfare the attorney can look into options other than guardianship that will still maintain a person's dignity and well-being. If the person is receiving Social Security benefits there is the Representative Payee program but applying to Social Security to become one's Representative Payee should be approached with extreme caution.[16]

Unfortunately, Florida's guardianship laws as codified in Chapter 744 of the Florida Statutes allow for the legalized exploitation of the elderly, disabled and our veterans by legally upending a person from his or her home and placing the person in a care facility such as a nursing home or an assisted living facility and taking the property of a person and misappropriating the property, especially for a professional guardian's benefit. Loopholes allow total strangers to take charge of your loved one's affairs, like in the case of Carol Kinnear who ended up with a professional guardian, not the family member that was supposed to be appointed. Once a total stranger is in charge of your loved one's affairs, that stranger can go in and legally take your loved one from his or her home and place your loved

[15] Georgia's version of Florida's Chapter 744 is contained in O.C.G.A (Official Code of Georgia Annotated) Title 29, 29-4-1. Keep in mind that Georgia is a member state of the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act (UAGPPJA) while Florida along with Texas, Kansas and Michigan are not part of that act. The UAGPPJA provides for the least restrictive environment when an adult guardianship is imposed.

[16] A similar program exists for Veterans Administration (VA) benefits, which is a Fiduciary.

one in a care facility. Furthermore, a loved one's assets – home, car, prized belongings – are sold right under the rug for the benefit of a professional guardian.

Our legislators need to go back and revisit Florida's guardianship laws as codified in Chapter 744 and rewrite them in a way that preserves the dignity of a person as well as make it harder to obtain guardianship on anyone, similar to Georgia's guardianship laws. At the same time criminal penalties for exploitation of the elderly and disabled as well as kidnapping should be severely enhanced if the person that committed the act is a professional guardian, as well as a permanent bar on the professional guardian's activities in Florida.

However, there was some improvement in 2020 when a part of Florida's guardianship laws were changed. A most important aspect of this change is that professional guardians are not allowed to file a petition for guardianship on anyone unless the proposed guardian is related.[17] But more reform is needed to prevent predatory and unnecessary guardianships especially in Florida, such as closing all legal loopholes that allow a professional guardian to object to a Petition for Appointment of Guardian as to a choice of who the guardian will be.

After all, a person should live out his or her last days in the most familiar surroundings around: A person's home. Placing a person in a care facility such as a group home, assisted living facility (especially with a memory care unit) or a nursing home where there is no justified need defeats the purpose of guardianship.

Revised July 2023, May 2024, November 2024, January 2025 and June 2025

[17] *DeSantis Signs Florida Guardianship Bill into Law, Expanding Oversight of Program,* article by Spectrum News 13 reporter Greg Angel, 19 June 2020.

A Primer on Florida's two other Guardianship Laws

Florida's primary guardianship law is codified in Chapter 744 of the Florida Statutes. Everything adult guardianship is covered in that statute from filing the petitions and emergency temporary guardianship as well as voluntary guardianship to reporting requirements for active guardianships and termination or modification of a guardianship.

However, there are two other guardianship related statutes within Florida law which cover specific situations. One is for persons with developmental disabilities, especially disabilities that manifested before the person's eighteenth birthday, and the other is for mental health involving involuntary commitment to a hospital for treatment.

Guardian Advocate for Persons with Developmental Disabilities, Chapter 393

Chapter 393, specifically Section 393.12 of the Florida Statutes, deals with guardianship for persons with developmental disabilities. These are persons with disabilities that have manifested before the person's eighteenth birthday, the legal age of becoming an adult in the State of Florida.

The court process is basically the same as Chapter 744, but with several differences:

1. There are specific criteria set in Section 393.063(12) of the Florida Statutes for a developmentally disabled person: A disorder or syndrome attributable to intellectual disability, cerebral palsy, autism, spina bifida, Down Syndrome, Phelan-McDermid Syndrome, or Prader-Willi Syndrome. These conditions must have manifested before the person's eighteenth birthday and constitutes a substantial handicap that can be reasonably be expected to continue indefinitely.

2. An attorney is not required to file a guardianship petition under Chapter 393. However, if there are substantial assets involved then an attorney is required. I believe it is penny wise and pound foolish to attempt to file a guardianship petition under Chapter 393 – besides, navigating Chapter 393 of the Florida Statutes as well as the Florida Probate Rules is akin to navigating Interstate 275 in the Tampa Bay region during the morning and evening commutes.

3. A three person examining committee – which is a requirement in Chapter 744 – is not required. Instead, a sworn statement in a court filing by the developmentally disabled person's physician is filed.

4. There is no adjudication of capacity in a Chapter 393 guardianship proceeding. Likewise, there is an adjudication of capacity in a Chapter 744 guardianship proceeding.

Like a Chapter 744 guardianship, a professional guardian advocate could potentially be appointed in a Chapter 393 proceeding. This is why other alternatives should be explored for a developmentally disabled person before pursuing a guardianship route. Potential loopholes could be exploited and objections to the proposed guardian advocate could be filed. The danger exists that the guardian advocate so appointed is not the family member such as the parents being appointed as guardian advocate, but a private professional guardian who may potentially not have the developmentally disabled person's benefit in mind. That developmentally disabled person you as a parent nurtured over the years and saw him or her get through the K-12 school years suddenly comes under the control of a private professional guardian and next thing you know it the person is being upended from his or her home and warehoused in a care facility such as a group home, a nursing home or even an assisted living facility.

One more thing about guardian advocates in Chapter 393 is school officials such as principals and professional staff that sometimes misguide parents of students with special needs in that guardianship of a special needs student is easy to get, just file the paperwork with the court and pay a filing fee. What school officials do not know is that getting a guardian advocate for a special needs student requires not only filing paperwork with the court but also having to attend court hearings before a judge. Unfortunately, the lack of an attorney requirement for filing is the deciding factor in filing a guardian advocate petition for a person with a developmental disability in court.

Guardian Advocate for Mental Health under the Baker Act, Chapter 394

Chapter 394 of the Florida Statutes contains Florida's involuntary mental health commitment law, which we Floridians know more popularly as the Baker Act. Formally, it is called the Florida Mental Health Act of 1971 and it is named after a Florida state representative from Miami, Maxine Baker, who championed for reforms to Florida's mental health laws.

A Baker Act takes one of three forms:

1. The most common is a law enforcement officer who initiates a Baker Act, usually a Florida Highway Patrol trooper, a deputy sheriff or a city police officer. The officer completes a state mandated form MH 3052a[18], Report of Law Enforcement Officer Initiating Involuntary Examination, along with the law enforcement agency's report of the incident documenting the Baker Act action.

[18] See https://www.myflfamilies.com/crisis-services/baker-act/baker-act-forms

2. A physician can initiate a Baker Act for a patient who is in need of emergency mental health services, especially in a hospital's emergency room. A state mandated form MH 3052b, Certificate of Professional Initiating Involuntary Examination, is used with information for law enforcement for pickup of the person in need of services. Not only a physician can initiate a Baker Act: A psychiatrist, clinical psychologist, psychiatric nurse, clinical social worker, mental health counselor, marriage and family therapist, physician assistant or an advanced practice registered nurse pursuant to Section 464.0123 of the Florida Statutes can initiate a Baker Act on the same MH 3052b form.

3. A petition is filed in court for the involuntary examination of a person. A Petition and Affidavit Seeking Ex Parte Order Requiring Involuntary Examination is filed with the Clerk of the Circuit Court together with a separate affidavit if there is a second witness involved. The petition is taken to a judge for review and if approved, the county sheriff is directed to pick up the person and deliver the person to the nearest Baker Act receiving facility for evaluation.

A person that is detained in a Baker Act receiving facility can be detained for up to 72 hours. At the end of the 72 hour period, one of three things can happen:

1. The person does not require mental health treatment and the person is released from the hospital.

2. The person voluntarily admits himself or herself for mental health treatment into the hospital.

3. The person is involuntarily committed to the hospital for mental health treatment.

When a person is involuntarily committed to the hospital for mental health treatment, a petition to the court is filed by the administrator of the hospital setting forth the facts that support the involuntary commitment. Based on testimony from the attending physicians involved with the person's care, the person may or may not have the decision making capacity to decide whether to undergo mental health treatment and if the person does not have the capacity to do so, this is where a guardian advocate for mental health comes in.

The hospital administrator files a Florida DCF form, CF MH 3032, Petition for Involuntary Inpatient Placement. Together with that petition is the Petition for Adjudication of Incompetence to Consent to Treatment and Appointment of a Guardian Advocate, Form CF MH 3106. A court hearing is held, usually at the hospital where the patient is being held. If the judge finds, based on testimony from the attending physicians involved with the person's care that the patient is

incompetent and needs a guardian advocate, then the patient is adjudicated incompetent and a guardian advocate is appointed utilizing yet another Florida DCF form, CF MH 3107, Order Appointing Guardian Advocate.

Keep in mind that the process of guardian advocate for Baker Act is ripe for abuse. Once it is learned that the patient has any form of health insurance, the process can be abused by placing the patient in involuntary confinement in the hospital for the maximum six months allowed, renewing the involuntary commitment order at the end of the six-month period as many times as needed. Furthermore, a professional guardian could be appointed who may or may not have the patient's best interests in mind.