



# Elder guardianship: A well-oiled machine



*Marie Winkelman, 89, had her rights removed a year ago at the request of her stepson-in-law, and is bewildered by the idea that she no longer has access to her own finances. She has hired two attorneys in the fight to have her rights restored, and yet the case drags on with little end in sight. (Staff photo / Thomas Bender)*

At 89, Marie Winkelman has long considered herself a fortunate woman — even though she lost her entire family except for one cousin in the Holocaust, was widowed twice and has no children.

Her brave odyssey from wartime Poland to the United States would appear to have ended happily, with a comfortable retirement in Sarasota.

But Winkelman's faith in a nation that had been kind to her was shaken in July 2013, when she was stripped of her civil rights and declared a ward of the state of Florida.

Now, strangers control her life savings, her worldly possessions and her medical care. The court has ordered a trust company to cut checks from her account for some \$635,000 to pay attorneys, guardians and others involved in her case, with many more expenses pending.

A professional guardian receives more than \$1,000 a month, at \$85 an hour, to coordinate Winkelman's doctors' appointments, help with financial transactions and communicate with her cousin and a family friend — who both sought unsuccessfully to free her from a legal status she finds expensive and intrusive.

“I pay for everything, for lawyers, for everything,” Winkelman says. “Unbelievable! They know that I don’t need any of their help. Not that I am so smart — but I can handle certain things.”

Her case is part of an accelerating national social phenomenon that has plunged aging Americans into a sometimes bewildering guardianship system when they are deemed too frail or mentally compromised to make decisions for themselves.

### **SPECIAL PROJECT: The Kindness of Strangers -- Inside Elder Guardianship in Florida**

The idea behind guardianship is to protect older citizens. But Florida has become a place where quiet, desperate disasters happen daily, often touched off by a single phone call.

In the middle of an unprecedented national longevity trend, half of all Americans 85 and over are believed to experience significant cognitive decline. Many of them wind up in sunny Florida, far away from sons and daughters — some with enough assets to make them attractive to scammers and cheats, others outliving their savings and utterly dependent on the state.

In response to a pressing need, Florida has cobbled together an efficient way to identify and care for helpless elders, using the probate court system to place them under guardianship.

But critics say this system — easily set in motion, but notoriously difficult to stop — often ignores basic individual rights. Most of it plays out in secret, with hearings and files typically closed from the public.

Even basic documents are hard to find. Because Florida’s court clerks keep records differently, there are no clear numbers on the rise in guardianship cases, and no accounting of how many millions are spent on attorneys, guardians, and medical and financial experts.

But there is no doubt that monitoring elders and tapping their assets is a growth business: In 2003, there were 23 registered professional guardians in Florida, according to the Department of Elder Affairs. Today there are more than 440 — an increase greater than 1,800 percent in 11 years.

Talk to the social workers, guardians and attorneys who run this system, and you hear assurances of their good intentions and diligence in looking after people who have lost their rights to make decisions for themselves.

But from family members and friends caught in the system against their will, stories emerge of a ruthless determination to take elders from their homes and make them conform to a one-size-fits-all process by which their belongings can be sold, and their family and friends shut out — until eventually they are locked away in institutions to decline and die.

The critics call this process “liquidate, isolate, medicate.” Once activated, this system plunges elders into a legal labyrinth, where they quickly come to depend on the kindness of strangers.

## **'IT'S NOT FAIR'**

Winkelman has a rich and bubbling laugh that can make a stranger feel right at home in her colorful apartment, where the walls glow with cheerful still lifes, landscapes and portraits she’s painted.





*Marie Winkelman. (Staff photo / Thomas Bender)*

The security guard at the entrance to the Fountains at Lake Pointe Woods, her nicely tended retirement community in Sarasota, describes her as “one of the nicest residents here.” She dresses with care, keeps her home spotless and is a delightful conversationalist.

But like many her age, she does not remember people well who are new in her life, and muddles dates and plans if she doesn’t have them written down in her neat calendar. She has misplaced keys and money, according to 12th Judicial Circuit Court documents, and suspected they were stolen, causing trouble for her with employees at the Fountains.

Hers is a familiar dilemma in Sarasota, one that concerned adult children might solve by hiring a care manager or in-home help. But the legal process that was set in motion without her knowledge ended in September with a judge’s declaration that she was “partially incapacitated.”

### **Railing against injustice, one case at a time**

The costly and contentious year-long struggle to have Winkelman’s rights restored ended swiftly, in an all-day hearing that was closed to the public — even though she had requested in writing that it be open.

The judge’s order took away her ability to make decisions about her own health care; to execute any legal contract, including a will; to marry without a judge’s approval, and to manage her own money.

Winkelman is more fortunate than most wards. She has assets — from her own career and two marriages — and supporters who care about her. She also has been allowed to remain in her apartment, and most of the time can act as though she were still in

control of her own life.

But the principle still strikes her as wrong. “It’s very unfair, this whole situation,” she says. “I don’t care so much because at my age, how long am I going to live? But it’s just — it’s not fair.”

## **'I WAS LUCKY'**

Winkelman was 17 when her first boyfriend crept over rooftops of the Jewish ghetto in Warsaw, Poland, to take her from home and hide her from the Nazis. Her parents had been reluctant to let her go.

“My mother said, ‘No, she doesn’t know how to cook an egg, even; how would she manage?’ ” Winkelman recalls. “He insisted. He said, ‘You don’t know what’s waiting for you.’ My mother said, ‘Oh, the war will be over soon.’

” Eventually, her family agreed that she should escape. She never saw any of them again.

Without documents, she couldn’t hold a job, and she moved from one hiding place to another. A friend sent her to a Catholic priest, she says, who told her, “You are so lucky: two months ago, a girl almost your age — two years older — died. We have her papers, and you can become her. This is a miracle.”

The Catholic girl’s name was Maria.

“So I was safe for awhile,” Winkelman says. “But it wasn’t so easy, because people started to talk: ‘Where is her family; nobody comes to her; something is wrong.’ Even the Gestapo came once. But I was young, good looking, and they liked me for some reason. I was lucky.”

Searching for relatives after the war, she found only one: Her mother’s sister had given away a baby for safekeeping before she was killed. That cousin is now Alina Koren. She lives in Ann Arbor, Michigan, and Tel Aviv with her husband, Yorem Koren, a noted robotics professor.

The couple intervened in Winkelman’s guardianship case, and Alina was eventually named as “limited co-guardian of the person” — meaning she can participate in decisions about her cousin’s life, but has no control over her finances.

“If you are old and have no money and don’t want to take your medications, nobody cares,” Yorem Koren says. “But if you have money, you wind up in court like Marie. I don’t understand this.”

Winkelman came to the United States in the 1950s, after living and working in Sweden. She moved to Sarasota with her second husband, Murray Winkelman, who died in 1993.

It was that husband’s son-in-law, Robert Szychowski, who started the guardianship proceeding last year. In 2009 she executed documents — at Szychowski’s request, she says — that included a power of attorney, giving him sweeping rights to handle her money; and a revocable trust affirming earlier statements that most of her fortune would go to her husband’s daughters when she died.

Szychowski, reached at his business in Hightstown, New Jersey, declined to comment on the case.

Winkelman says she now regrets signing papers she didn’t understand.

“This was my husband’s family, and I wasn’t very close with them somehow; they lived far away,” she says. “But I liked my husband very much, and anybody who was close to him, I respect them. And they were nice to me; they would send me flowers once in a while, and cards on occasion.”

Marc Ratner, a retired New York businessman, originally from Poland, has known Winkelman since 1956 and was friends with her husbands. He wrote in a letter to the court that she had just been hospitalized with a sodium deficiency before signing those papers

in 2009.

Ratner, 93, said in an affidavit that he believes he is the “boyfriend” that Szychowski’s petition for emergency guardianship claimed was interfering with her health and “threatening to take her out of the jurisdiction.” He denied those claims. Ratner has since made repeated trips to Sarasota, trying to free his friend from her entanglement with the guardianship system.

“You can do these things only through a lawyer,” Ratner says. “I don’t know why this is so. The lawyers are being paid from her money that she made with her first husband.”

## **A MATTER OF DAYS**

Sifting through the guardianship case files at the Sarasota County Clerk of Court’s office is a sad exercise that makes it easier to see why the system for removing rights can be such an efficient, even ruthless, machine.

There is the 75-year-old woman with two estranged daughters, whose mobile home was infested with rats. The 75-year-old man with Parkinson’s disease, wheelchair-dependent, whose caregiver induced him to pay for their gambling cruise.

The 87-year-old woman whose neighbors reported that she was knocking on their doors naked.

But the petition to place Marie Winkelman under guardianship also makes for alarming reading. It contends she has fallen under the influence of a “boyfriend” who advises her against taking medications.

The legal process that strips an individual of every civil right often takes a matter of days. This is because guardianships are a last resort, and usually come to the court’s attention in the form of an urgent scenario, says Anne Ridings, director of guardianship for Lutheran Services of Florida, a nonprofit agency that handles a caseload of about 300 wards in Southwest Florida.

“Most cases are emergent in nature,” she says. “People tend to wait until there’s a crisis, when maybe something could have been done to avoid that crisis.”



# The elder guardianship system in Florida



## Family

Florida law gives family members priority when it comes to elder guardianship. But if family members disagree, or are considered unfit for any reason, a professional guardian is usually named instead. Often family members are not notified of a guardianship hearing until it is too late to intervene.



## Petitioner

Anyone can petition the court to find an elder incapacitated and name a guardian. It can be the Florida Department of Adult Protective Services, which investigates anonymous tips alleging elder abuse or neglect. It can also be a family member, or a facility providing care for the elder.



## Judge

Probate court judges handle guardianships along with a caseload of trusts and estates. They have power to make decisions about a person's capacity without having to meet that person. They also approve all fee petitions and many of the guardian's actions, including a plan submitted annually.



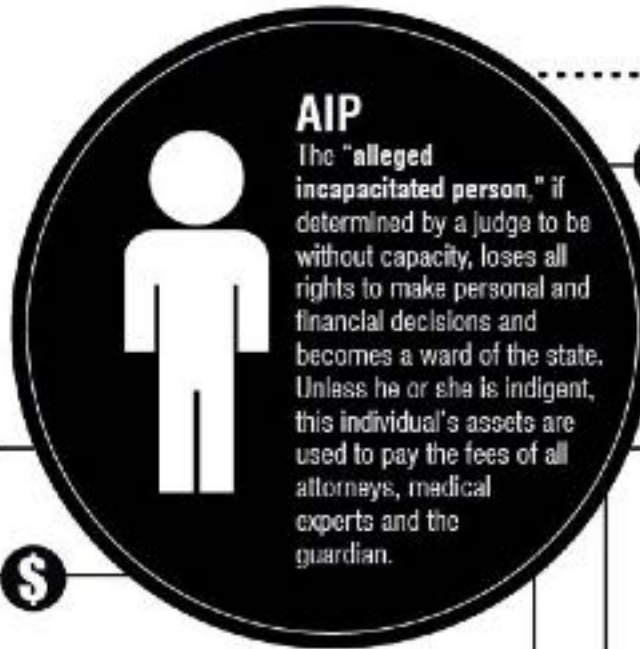
## Guardian

The judge can appoint a "plenary guardian" — who makes all decisions for the rest of the ward's life — or a limited guardian — who might be responsible only for finances, or be a "guardian of the person," responsible for medical care, housing and other matters of daily life.



## Petitioner's attorney

This attorney gets the ball rolling by filling the paperwork, usually also arranging for the examining committee to visit the elder and locating a guardian who agrees to take the case. This lawyer remains involved until the guardian takes over and the case is closed.



## Guardian's attorney

The guardian is represented by an attorney while the case remains open, asking the court to approve such actions as the liquidation of assets, and handling any legal questions.



## Examining committee

In Florida, the panel typically consists of a court-approved medical doctor, nurse and social worker, who must agree on a finding of incapacity. In Sarasota County, the doctor usually is paid \$325 and the others get \$200 for the visit and report. They may also testify in court hearings.



## Ward's attorney

The judge appoints an attorney to represent the prospective ward. The Florida guardianship statute gives an individual the right to choose an attorney, but in practice the judge can reject that choice in favor of someone who specializes in guardianships. It is rare for the initial court-appointed attorney to ask a judge later to re-open the case or restore an individual's rights.



## Additional attorneys as needed

If a guardianship case is complex — and the ward has enough assets to pay for them — lawyers can be retained by the family or ward to reopen the case and try to reverse a judge's orders. The petitioner and the guardian or their attorneys can also hire additional legal representation to handle aspects of the case, at the ward's expense.



STAFF GRAPHIC / BARBARA PETERS SMITH, JENNIFER E. A. BORRESEN

[\(Click the graphic to enlarge\)](#)

Anyone can file a petition to determine an elder's incapacity, which is how the legal process begins. It can be a concerned family member who lives out of state, a case worker for the Florida Department of Children and Families who responded to an anonymous call — even the administrator of a hospital or nursing home, seeking authority for a medical procedure that an elder is refusing or lacks the ability to approve.

According to Florida statutes, after a three-person examining committee — usually a psychiatrist or medical doctor, a nurse and a social worker — visits the elder and completes a report, the next step is to petition for an emergency temporary guardianship.

In practice, the process is often on a fast track, says Ridings.

“You can’t file a petition to the court saying, ‘I think somebody’s incapacitated, in danger and in need of assistance,’ and not at the same time file a petition for appointment of a guardian,” she says. “You have to simultaneously file. A guardian is asked, ‘Are you willing to serve?’ and they go through the screening process fairly quickly.”

In Sarasota County, the circuit court judge in charge of probate cases also handles guardianships, and judges rotate into the position. Judge Deno Economou has been deciding elder guardianship cases for roughly two years.

“I think the concern we have is the fact that Florida is getting more of these people,” he says. “We live longer; we have medicines that keep our hearts running and the blood vessels open.”

### **[Elder guardianship: Where to learn more](#)**

But Economou says he doesn’t believe the volume of cases keeps him from fully considering the fate of each prospective ward.

“They’re coming to you and they’re so vulnerable, and you have to be careful because you’re the final gatekeeper,” he says. “Some cases are so obvious; others are tough. They’re taken from their homes because they can’t cook their own meals. You place them in a strange environment and your heart breaks for them.”

Economou also says he has reversed or amended decisions about guardianships when circumstances warrant this.

“If I get a letter from a ward saying, ‘Judge, I feel better; restore my rights,’ I’ve done it a few times,” he said. “We are not closing that door on you. It’s not necessarily forever. You can restore some rights and not others.”

A ward’s court-appointed attorney, however, is generally reluctant to take the step of filing paperwork for the restoration of rights, called a “Suggestion of Capacity.”

Generally the ward — or friends or family — must retain another lawyer, at a beginning cost between \$5,000 and \$10,000. Coming up with the cash for this retainer can be an impossible barrier, as any assets the ward still possesses are under the guardian’s control.

Florida law has a checklist of 14 rights that an elder may surrender as a result of the guardianship process — including the right to marry, to vote, to manage finances, to determine where to live and to accept medical care. If the elder has capacity to exercise some of these rights, the thinking goes, the guardianship can be limited and less intrusive.

But in the paperwork of a typical case file, the examining committee members simply check all the boxes on the list of rights.

“A full or plenary guardianship should be the very last resort,” says Brenda K. Uekert, principal research consultant for the National Center for State Courts. “But in most cases that’s not true. In most cases, a full guardianship is simply easier.”

And the adversarial nature of civil litigation, says Jennifer L. Wright, a professor at the University of St. Thomas School of Law, makes resisting full guardianship an uphill battle for elders.

“Putting them in the worst possible light is what the petitioner must do to win the case,” she says.

The burden of proof falls on the prospective ward, who rarely has a strong advocate, says Diane Menio, executive director of the Center for Advocacy for the Rights and Interests of the Elderly in Philadelphia.

“Often the attorney who’s appointed to be the attorney for the alleged incapacitated person is really just part of the team” setting

up the guardianship, she says. “They don’t defend the person as they would in a criminal trial.”

Complicating the challenge for judges like Economou is an increased tendency for families to squabble over money, and resort to lawsuits and guardianship petitions as a way to keep elders from making their own financial decisions.

“In my practice, in the last five to seven years, we’ve seen a 30 to 40 percent uptick in these kinds of cases,” says Bernard A. Krooks, a New York elder law attorney considered a national expert in special needs planning. “What’s really driving it is, ‘Don’t spend my inheritance.’”

## **A MATTER OF MONEY**

On Sept. 22, Economou presided over the 12th hearing of Marie Winkelman’s case. Winkelman told her guardian she wanted this hearing to be open to the public, and wrote a letter to her attorney saying so. But that attorney, Audrey Bear, told a reporter she asked the judge to close the hearing anyway.

“I’m sorry,” Winkelman said to her supporters, as Bear led her into the courtroom.

Florida law states that a ward has the right to “have the hearing open or closed as she or he may choose.” The reporter mentioned this to Bear.

“So many of you are telling me about the Florida Statutes,” she said emphatically, before closing the courtroom door. “But none of you are lawyers!”

Bear did not respond to a request for further comment.

After a daylong hearing, in which Economou heard from people who had examined or treated Winkelman — people she referred to as “my enemies” — he finalized an order that kept her paid guardian in place, as a co-guardian of the person in addition to her cousin. Economou also placed Winkelman’s fortune under the control of a Sarasota trust company — the firm to which her stepson-in-law had moved all her money after initiating the case.

A hearing in November addressed — and appears to have settled — multiple arguments over the attorneys’ fees. Every time they all appeared at such a hearing, it cost Winkelman more money.

One of them, for example, charged \$625 to attend two hearings that addressed objections to legal fees, according to court records — and an additional \$4,675 to prepare for the all-day hearing in which Winkelman failed to have her rights restored.

As for Szychowski — the stepson-in-law whose petition plunged Winkelman into guardianship — the court has removed his powers of attorney and he no longer controls her assets. Attorneys representing him have been paid more than \$154,000 by the trust company in charge of Winkelman’s finances.

Her last legal will still leaves what is left of her savings to Szychowski’s wife and sister-in-law. Only the trust company officers — people she does not know and did not select — can rewrite her will, with court approval.

Winkelman says she was willing to share the story of her guardianship because she hopes others can avoid her mistakes. Even Hitler’s Germany, she says, failed to prepare her for this fresh loss of innocence, in her 90th year of life.

“I was brought up in a family where we all loved each other. I was very naive, and I meant well,” she says. “Now I’m telling everybody — especially young people — don’t sign anything.”





# Between a rock and a hard place



*Marise London has dementia and her daughter Julie Ferguson, left, is trying to fight court decisions that have placed her mother under the control of a professional guardian. (Staff photo / Thomas Bender)*

Julie Ferguson wishes now she had never made the first phone call.

It was in the autumn of 2010, after she noticed strange notes by the phone at her mother's house on Siesta Key: "Change will." "Change power of attorney." "Send money to Tennessee."

Ferguson says she worried that her mother — then 81 and clearly already having problems with memory and reasoning — was sending money and jewelry she could not afford to lose to a family member who had moved away. An attorney advised her to get help from the Department of Children and Families' Adult Protective Services division.

"I was scared," she recalls. "I thought, 'I'm not going to be able to keep her in her house and that's all she ever wanted.'"

Four years later, Marise London — for years the owner of a well-known art gallery and frame shop in Gulf Gate — has managed to stay in her beloved house. But decisions about her daily life there — who visits her and cares for her, where she goes and even what she eats — are **made by professionals hired by the state of Florida, and paid with her money.**

“I want to stay in my home until I die,” London wrote in February 2013. “I chose Julie to fulfill those wishes. I still choose Julie and trust Julie for my care as she knows my wants and needs. I hate for strangers to come inside my house.”

Ferguson’s attempt to free her mother from the system — or at least be named as the guardian of her person, if not her property — has gone nowhere. Ferguson still owes thousands to the attorney she hired to represent her, and cannot find another who will take her case.

Many Floridians who find themselves wards of the state took steps in the past to make sure their fortunes and futures were secure, signing documents and appointing people they trusted to manage their affairs if they could not.

### **SPECIAL PROJECT: The Kindness of Strangers -- Inside Elder Guardianship in Florida**

But Southwest Florida’s guardianship case files are full of examples where life did not go as planned.

“I have spent the bulk of my career telling clients how to avoid guardianship,” says Bernard A. Krooks, an elder law attorney considered a national expert in special needs planning. “Having been around the block, I now understand that’s not true. Having all the right documents doesn’t guarantee that the people you choose will do the right thing, or that others won’t accuse them of doing the wrong thing.”

Florida’s guardianship statute — considered a model for other states — favors placing incapacitated adults in the care of family members. But feuding relatives can find in court that their desires and entitlements are trumped by what the system calls “the best interests of the ward.”

Unable to sift through a family mess, judges resort to professional guardians who can restrict access to the elder and spend money in ways the family cannot control. People who call Adult Protective Services hoping to resolve a family conflict can wind up regretting that they unleashed such a powerful force.

“If the family’s squabbling, it’s easier to name a third party and tell everybody it will be OK,” says Diane Menio, executive director of the Center for Advocacy for the Rights and Interests of the Elderly in Philadelphia. “It puts the family in a difficult situation, and not all those families are abusive. Even if they were abusive, it doesn’t mean that their mother or father doesn’t still love them and want to see them.”

A study of guardianship case files — the parts that are not confidential — reveals that professional guardians have a fairly routine playbook. After placing a ward in a facility or — less frequently — arranging for care at home, they inventory the assets and start selling them off. The car is usually first, then household goods, then the house itself. The assets are used to pay the caregivers, the attorneys and the guardian — until the money runs out, the ward dies, or both.

Professional guardians and elder law attorneys, perhaps jaded from struggles with dysfunctional or uncaring families, are quick to believe that relatives who buck the system are simply trying to protect their inheritance. But these relatives say they and their loved ones are being denied due process, because the only way to challenge the system is to spend more money on attorneys who fail to work on their behalf.

“The guardians have their attorneys, and that’s where the money really goes; it’s the attorney fees,” says Sam Sugar, an Aventura doctor of internal medicine who founded an organization called Americans Against Abusive Probate Guardianship. “The local guardianship companies make it their business to hire every lawyer that could possibly be in probate court to do some work for them. When a victim is looking to hire the best possible attorney, that attorney is not available.”

## **An exclusive club**

For conscientious attorneys, guardianship cases can easily require more time and effort than most clients can afford, and their hourly fees are capped in some jurisdictions — including Sarasota and Manatee counties — but not others.

Court-appointed attorneys for prospective wards have no incentive to buck the system, says Menio.

“It’s really just any lawyer who happens to be in the hallway, and they can’t say no to the judge,” she says. “There’s very little compensation — unless the ward has money, and then they’re lining up for that.”

### [Elder guardianship: Where to learn more](#)

This economic reality creates a small pool of attorneys who handle such cases. In any community, they see each other often, sometimes representing the petitioner, sometimes the ward, sometimes the guardian.

“There are so few who do the guardianship work,” said 12th Judicial Circuit Judge Deno Economou, who has been handling these cases in Sarasota and Manatee counties for roughly two years. “For some reason, attorneys have not gravitated to that area of practice.”

He often relies on their expertise, adding: “I’m the type of judge that if I don’t know, I ask somebody. These are the types of attorneys you can turn to.”

But critics worry that this kind of reliance sets up a conflict of interest. Lawyers and professional guardians in Florida are asked by the probate court to take on the cases of indigent wards, and the same court assigns them to cases that have the potential to be lucrative.

Every prospective ward must be represented by an attorney, and this assignment process — referred to in Sarasota County as “the wheel” — varies from one jurisdiction to another and can operate in mysterious ways. A study of guardianship case files in Sarasota County shows the same attorneys’ names turning up frequently; others only rarely.

Critics say it creates a situation in which judges, attorneys and guardians operate in a system of mutual obligation.

“Alliances are forged, friendships are forged, and interesting relationships develop,” Sugar maintains. “It’s an incestuous type of relationship. The reason some guardians are in business is because it is an open piggy bank to enormous estates. If you are interested in making a lot of money really fast, you can charge any amount of hours you want.”

Sugar, who is “mostly retired,” says he founded his organization after being drawn into a bruising legal struggle with his wife’s relatives.

“Truthfully, no one wants to do this,” he says. “This is not something I planned on spending my golden years doing. But this guardianship system is maybe the most egregious thing I ever encountered in my 67 years on the planet.”

The number of Floridians who make a living as elder guardians has exploded in the last decade, rising from 23 registered professionals in 2003 to 440 today. Financial and legal sector layoffs in the Great Recession led some into a profession where the low bar to entry amounts to 40 hours of training and the lack of a criminal record.

But Gerald Hemness, a Brandon attorney who has written a manual for guardians, says an unsustainable business model has driven some qualified guardians to leave the profession.

“They work selflessly, and they don’t get paid on a massive number of cases,” he contends. “But that does not suggest there aren’t inexperienced, poorly trained, incompetent guardians out there. Unfortunately, the ones that are better prepared and have more training struggle on an every-case basis to be paid for the work they do.”

Hemness objects to the “loud cacophony” from critics like Sugar, “that guardians are evil and the courts are corrupt. It’s a gross misstatement, a stereotype that’s utterly inaccurate. The vast majority of the people under guardianship need to be there.”

Sugar admits that some of these professionals are motivated by a desire to help the helpless.

“Yes, there are some wonderful guardians; there really are,” he says. “God bless them. But there are a significant number of predatory guardians who work with predatory attorneys.”



Once wards are enmeshed in the system, Sugar adds, going before the same judge who took away their rights and trying to get that decision reversed or modified can be daunting — even with money and connections.

“Our attorney, who is an honest man and has tried hard for us, can’t get past first base,” Sugar says. “Clarence Darrow couldn’t win these cases.”

## Getting the checkbook

Douglas J. Shadle, a psychiatrist in Punta Gorda, has performed mental status exams of prospective wards for 15 years. He is troubled by what he sees as an increasing trend toward “asset-centered guardianships” — where money is the focus, and not the individual’s needs and rights.

“Too frequently now, the petitioner and the petitioner’s attorney have little interest in the autonomy of the alleged incapacitated person,” he says. “It’s more about the person’s assets or about a hospital not wanting to spend any more on the person’s care.”

Anyone can petition the court to appoint an emergency temporary guardian for an elder, even before an examining committee — usually a doctor, a nurse and a social worker — finds any lack of capacity. Shadle does not believe huge numbers of prospective wards are incorrectly diagnosed as having dementia. Of about 800 evaluations he has done, he estimates that “maybe 30” were not incapacitated.

The problem, he believes, is that incapacity can become a license for access to estates.

“You get petitioners who can’t articulate what the alleged incapacity is and just want to get hold of the checkbook,” he says. “We get a lot more of those now.”

Shadle sees attorneys who file hasty petitions with “assets unknown” and no relatives’ contact information on the document. Often in these cases, family members don’t learn about the guardianship process until it’s too late to stop it.

“The lady I saw this morning,” he says “in this temporary filing it listed her son and two daughters. The son was in Michigan, address unknown; the daughters were in New Jersey, address unknown. I asked her for some information about her kids; she had it right there — addresses, phone numbers. I don’t think that’s right.”

Florida’s guardianship statute favors relatives as a ward’s most logical caregivers. But in practice, professionals tend to keep them in the dark about how the system operates — either because dysfunctional families are difficult to work with, or because there is more profit in keeping things professional.

“I think they need to be a lot more aggressive about trying to find the family at the beginning,” Shadle says. “Sometimes you don’t want to turn over that stone, but the law says that’s where you have to start. The attorneys and the guardians have a cozy relationship, and there’s kind of a quid pro quo there, that tends to shut out family persons.”

Shadle is also troubled by the latitude guardians have to spend their wards’ funds as they see fit, with almost no court oversight.

“We’ve got a lot of professional guardians who are really good, but I think they get tempted sometimes,” he says. “If there’s a circle of attorneys and other colleagues, and nobody is saying, ‘Wait a minute; you can’t do that’ — it just goes on.”

## A costly status quo

Four years into her mother’s life as a ward of the state, Julie Ferguson’s emotions are still as raw as sushi. She can’t talk about their quandary without stopping to weep, and her outbursts in court and arguments with her mother’s guardian have probably not helped their case.

When she took her mother on a court-permitted vacation to North Carolina a year ago and did not return to Florida on the agreed date, she was threatened with an emergency injunction. After that, Lutheran Services of Florida — a Sarasota nonprofit agency with

a caseload of about 300 wards, 70 percent of them indigent — refused to agree to Ferguson’s request to become co-guardian of her mother’s person.

If she wants to petition for full guardianship, she says, her current attorney would charge a minimum of \$7,500 — on top of nearly \$9,000 she estimates she has already paid and the \$9,000 she still owes. Ferguson has searched through the Tampa Bay area for another attorney, without success.

Lutheran Services pays itself \$85 an hour out of London’s assets for caregiving tasks that her daughter says she can do for free. This can result in a duplication of efforts Ferguson finds absurd and frustrating. According to court documents, these charges range from \$8.50 for a guardian to call a doctor’s voice mail and hang up, to \$170 for the guardian to spend two hours at London’s home for a doctor visit while Ferguson is there as well.



*Marise London. (Staff photo / Thomas Bender)*

London doesn’t like people coming to her house and fears doctors especially, her daughter says, so she tries to learn about appointments and show up for them.

At this point, Ferguson says, “I’m just grateful they allow me to assist and see Mom, despite accusations of ‘interference.’ They keep saying if she doesn’t cooperate, she’s going to assisted living.”

Anne Ridings, director of guardianship for Lutheran Services, says Ferguson’s arguments with a sibling have made the London case complex.

“We’ve been working diligently trying to make things work with the family,” Ridings says. “One adult child doesn’t want any contact or information; the other two are continuously fighting and pointing the finger. Her goal has been to stay at home, and

we've been working almost two years to try to keep her at home. She's still at home; we haven't moved her."

As London's guardian, Lutheran Services has the power to cut off her family access completely, sell her house and move her to a long-term care facility. But Ridings says they are obligated to consider the ward's interests, even if that means dealing with difficult family members.

"I don't take it personally," she says. "Our job is to help our client and make sure her needs are being met in the environment best for her."

Ferguson knows she must walk a fine line for her mother's sake. But as London's savings dwindle, she says, she can't help resenting the system's inefficiencies. Every dollar out of her mother's pocket, she fears, hastens the day when the Siesta Key house must be sold to pay for her care.

This is why the episode of London's car still rankles.

Against London's and Ferguson's wishes, Lutheran Services decided to sell the car. As is customary in Sarasota guardianship cases, a single dealer — Anger's Car Finders — provided an appraisal that was also a bid: \$2,487, according to court documents. Ferguson said that was too low, and offered to buy the car herself for \$3,600 — which her mother's court-appointed attorney accepted. She says she sold it quickly for \$5,000.

Listed as part of more than \$10,000 in fees to that attorney was a total of \$366 for the task of selling that car — including the time it took to deal with Ferguson's higher offer.

Ferguson says such mounting costs have placed her in a losing situation.

"The charges become so exorbitant that the adult child finally has to give up the fight," she says. "Meanwhile, I can't get another attorney to touch this. They say I can't win, because I 'waited too long.' This is so the opposite of what I learned in my guardianship class."

Ridings says that once a guardianship is in place, adult children have likely already waited too long to address a parent's needs.

"It's very difficult when you're the child of a parent that is now having early signs of dementia to step in and say enough is enough," she says. Not acting in time "can sometimes create the illusion of neglect; maybe somebody goes out and sees that she hasn't eaten and isn't taking her meds.

"As our society ages," Ridings adds, "we need to understand that you're doing a service by stepping in, versus 'I don't want to take away my mom's freedoms.' "

*Correction: 70 percent of Lutheran Services of Florida's 300 wards are indigent. An earlier version of this story had an incorrect number.*





# Elder guardianship: Listening to them



For a 66-year-old used to being active, daily life in a Sarasota institution that caters to elders with dementia can be tedious.

Linda-Kaye Bous looks forward to appointments in the hair salon, and visits from her sister-in-law. She tries to keep up with the outside world by watching TV and reading newspapers.

She is not allowed to leave the locked assisted-living center where she passes time in a 9-by-10-foot bedroom — part of a space she shares with a woman who cannot remember Bous from one day to the next.

“It’s too bad, because I love her,” Bous says. “I try to take care of these people here, because I feel sorry for them.”



*Linda-Kaye Bous, 66, has been living in a locked assisted-living facility since May. "This isn't where I plan to spend the rest of my life," she says. (Staff photo/ Barbara Peters Smith)*

Since April — when she was still reeling from the death of her husband in January — Bous has been a ward of the state of Florida, with no right to make decisions for herself. A court ruling declared her to be incapacitated after a hearing in June that she did not know she could attend, held after she had already been removed from her house.

Bous insists that she does not have dementia. Her sister-in-law, Jane McElree, says she does not understand how someone as “mentally sharp” as Bous could wind up living like a virtual prisoner.

“To me, it just seemed too secretive,” McElree says of the process. “This is so wrong, and it’s got to stop.”

Florida’s elder guardianship system, designed to intervene quickly for the protection of frail and vulnerable citizens, can appear opaque to anyone hoping to challenge its rationale. Once its legal wheels are in motion, trying to keep an individual from becoming a ward of the state is nearly impossible for those who lack money, access and an understanding of the rules.

### **SPECIAL PROJECT: The Kindness of Strangers -- Inside Elder Guardianship in Florida**

Critics have a name for the efficient formula guardians often use to take over the property and lives of their wards: “Liquidate, isolate, medicate.”

For Bous, the isolation is tough to endure. Her guardian, she says, has told her she cannot afford a cellphone. Attempts to reach Bous at the center often end in a hang-up, and when she places calls on the home's shared telephone, her conversations are never private.

At night, Bous lies awake worrying about her house across town, a lifetime's worth of possessions and the three cats she had until May. As a native of Scotland with Canadian citizenship as well, she also frets about her U.S. residency status because her husband is deceased.

So she often sleeps late in the morning, because she is weary and there is little else for her to do.

On a recent afternoon a pianist entertained residents in the center's living room, singing "New York, New York" to the clear enjoyment of the elders seated there.

"It's always the same music, over and over," Bous said with a wry smile. "It can get a little depressing."

## **A human rights issue**

Bous' situation is a far cry from the way legal experts say the adult guardianship system should work.

Florida's statute is considered one of the best in the world, but its practical application has been criticized by advocacy groups and elder law scholars as paternalistic, ruthless and even corrupt.

This public-private system patched together to safeguard elders from fraud, neglect or abuse runs on little money — most of it coming from the wards themselves. The confidentiality of court records and lack of oversight invest two individuals with enormous power: first, the judge who determines a person's incapacity, often without ever meeting that person; and second, the guardian who oversees every aspect of the ward's life, up until the moment of death.

The Florida Legislature may be moving toward modifications to the statute, which has been overhauled before in response to guardianship scandals in the 1980s. This year, Rep. Kathleen C. Passidomo, R-Naples, convened a group of attorneys to revisit the question of reform.

She believes it will be a matter of updating and modernizing the current legislation. She hopes to "put more teeth" in its provisions, making the state system more uniform and finding a way to scrutinize attorneys' fees.

"The statute itself is by and large a good law; there are a number of suggested changes, but it's not like we want to throw the baby out," she says. "I guarantee you, no matter what we come up with, everybody's going to have a problem with some of it."

Meanwhile, world and national leaders in the field are calling for far more than statutory tinkering at the state level.

They seek a paradigm shift that would make full guardianship a rare last resort, using family mediation, "person-centered" approaches and "supported decision-making" instead of an all-or-nothing court process that strips citizens of their rights and their property.

New ideas call for making it easier for wards like Bous to challenge court decisions, and giving even elders with dementia as much autonomy as possible — taking cues from the way they have spent their lives to place their unique personal wishes before their so-called best interests.

America is not alone in dealing with the challenges of longevity and dementia, and other countries have responded in novel ways. Japan has rewritten its guardianship law to honor individual rights. Germany requires judges to meet with prospective wards in person. The United Kingdom has new transparency laws that subject judges' decisions to public scrutiny.

Denzil Lush, a senior judge of the Court of Protection in Great Britain, says the change was in response to "bad press calling us a secret court." He believes posting court rulings online has improved the process.



“You find yourself writing an opinion not only for the parties,” he says, “but for others who may be reading it.”

So far there seems to be little U.S. interest in making the adult guardianship system more transparent. But some observers believe the baby boom generation will demand more public oversight and individual rights for people who may lack capacity.

“Human rights are not something the government gives us,” says Kristin Booth Glen, an author of New York’s guardianship law and a former state judge. “They are something every one of us has because we are human.”

But skeptics point out that a patchwork system that varies from state to state, even county to county — with local interests vested in the status quo — reflects a culture with little concern about giving voice to the old and infirm.

“Sounds good, doesn’t it?” says elder law attorney A. Frank Johns, chair of the National Guardianship Association. “But from the perspective of the United States, the idea of person-centered relationships is a dream. To have this in more than 50 jurisdictions is beyond a dream.”

Ideally, in a person-centered guardianship, someone like Bous — who recites names, addresses and telephone numbers with the precision of someone half her age, and greets a reporter after a week’s absence with an exact recall of where the conversation left off — would not be confined to a locked center.

Even current Florida law calls for a “residential setting best suited for the needs of the ward,” and stipulates that the guardian “may not restrict the physical liberty of the ward more than reasonably necessary.”

But it does not require any monitoring or review of guardians’ decisions, except for audits of their spending. Once a ward’s case is closed — as Bous’ was in August — the guardian’s power is all but absolute.

If mistakes are made, they happen behind locked doors, to people whose voices are too faint for society to hear.

## **The lights go out**

Bous’ husband of nearly 27 years — Joseph Anton Bous, a longtime coach in Sarasota schools — died at the age of 66 last January, leaving her alone in their three-bedroom house on a quiet, leafy street in Sarasota.

She was devastated for months, unable to eat properly or even pay the bills.

It got so bad, finally, that her lights went out.

Someone apparently placed an anonymous call to Adult Protective Services, the state agency charged with cases of elder abuse or neglect. Bous remembers a nice man who came by and arranged to have her electricity turned back on.

Bous says when she talked with her court-appointed emergency guardian, Ellen Himes, her impression was that she was going to the facility for a few weeks’ rest and recuperation.

“We were sitting out in front of my house,” Bous recalls, “and she said, ‘There’s a place I know of and they have a room that’s open and maybe you should go there just for a little while. It will help you feel better. Take a few clothes.’ ”

Himes said she could not discuss Bous’ case specifically, “due to privacy issues of HIPAA” — the Health Insurance Accountability and Portability Act — “and other confidentiality issues surrounding the ward.” But she said helping a ward make the transition from an unsafe environment often requires tact.

“I never tell them that they’ll never go back to their homes,” she says. “I try to guide them around it in a better way, like, ‘You’re going to go live in a resort now,’ as opposed to, ‘You’re not going back to your house because it’s too big and you can’t handle it anymore.’ ”

Himes says she has 15 wards, but only four that she is paid to oversee, because the rest have no money. When she agrees to take a case, she says, she has no idea of the person's financial or health situations. She sometimes has to scramble to find a facility that will accept her ward with no guarantee of payment.

### [Elder guardianship: Where to learn more](#)

"I always try to give them a better option than where they are now, because they know in their head — even if they have dementia — that it's not working," she says. "I never lie; I say, 'This is the place we have for right now.'

"I have four of them who think they're living in a resort," she adds. "It doesn't matter, because they're happy."

Usually, Himes says, when she goes through wards' mail, she finds that they are "deeply in debt."

Bous maintains that she has asked Himes to bring her correspondence to the facility.

"I haven't received any of my mail for six months now," she said in October. "I keep saying I know there is mail I should be seeing. She says it's mostly all junk mail. Do they think I'm stupid?"

But Himes says her wards' mail consists mostly of bills.

"I have gotten only one personal letter in my entire time as a guardian," says Himes, who received her license in 2009. "These people that I have, they have nobody or they are estranged from their children."

Sometimes, she adds, the guardianship process can cause a family to reconcile.

"I'm the guardian, so I'm the bad guy," she said, "and the children are back in good graces and they can love each other again. I love it when that happens."

Himes says that only two of her wards have been pleased at first to have a guardian.

"Everybody doesn't want it because they know that's the end of the road," she says, and her job is to tell them, "You're not going to die; you're going to have a good life; we're going to do fun things with you."

One ward, Himes recalls, simply didn't like her face.

"This lady hated me for the first month," she says. "I kept on, kept on. On her deathbed, I was the one she asked for."

## **'He was difficult'**

Bous has a gentle, friendly manner but a steely will — perhaps forged in her lifelong struggle with polio, contracted when she was 5 months old in Scotland. Her family moved to Canada, where the Rotary Club paid for her medical care.

"I've had operations all my life, every year all through school," she says. "It's made me tough."

Bous walks with a slight limp, and says she needs surgery again.

"On one of my feet, the toes have moved to the side," she says. "I had a good doctor; he was going to straighten them out. But I haven't been able to do it because this has set me back."

Aside from her Canadian relatives — with whom she has lost contact since becoming a ward — Bous has only her sister-in-law, who recently retired to Sarasota after a teaching career in Fort Myers.

Both Bous and McElree say the last few years of Joseph Bous' life, as his health was failing, were traumatic.

His angry outbursts brought visits from sheriff's deputies, they say, and after he had an altercation with the mail carrier, the Post Office refused to deliver to their house. When he wrecked their car, Bous says, he demanded that she get behind the wheel; as a result her driver's license was suspended.

"The diabetes took his personality and everything from him," McElree says about her only brother. "He became someone you wouldn't recognize. The strokes were taking over, and he was difficult."

Such decline and turmoil, followed by a death, can bring on an extreme form of grief that looks like post-traumatic stress disorder, says Jim Monahan, the executive vice president of community engagement for Tidewell Hospice, and a specialist in bereavement.

"It sounds like she went into a severe state of depression — which wouldn't be considered the normal grief reaction, but it certainly can happen," Monahan says, on hearing about Bous not paying her bills. "She was probably looking after him all the time, and putting her needs second."

McElree says she tried to help out, making funeral arrangements for her brother and picking up the Bouses' mail. The guardianship process, she maintains, happened so swiftly that it caught everyone by surprise.

"She was not capable at the time," McElree says of her sister-in-law. "She was a grieving widow who never got a chance to mourn properly. Obviously, in her situation she needed some attention — but not this."

## 'Caught in the flow'

Because the U.S. guardianship structure is so underfunded and fragmented, advocates say, no reliable data exist to make a pressing case for reform.

Nor is there an adequate system of oversight in most of the 54 or 55 separate systems in the country.

"Monitoring is the hottest issue the courts face," says Brenda K. Uekert, principal research consultant for the National Center for State Courts. "Nationally, if I had to grade it, I would give the courts an 'F.' Most courts do not have investigators, court visitors or even volunteer monitors."

In Florida — with its concentration of elders living far from their hometowns, who routinely fall prey to scam artists and profiteers — the need for scrutiny is even more pronounced.

Sarasota County Clerk of Court Karen Rushing says hers is one of the few among 67 Florida systems that has a strong guardianship auditing process in place. Adding regulations could be costly, she points out, and a further drain on wards' assets.

Still, she acknowledges that the status quo can be bewildering for wards and their families.

"I think the war stories that exist are very compelling," Rushing says. "You can just get caught in the flow, and you can't get out of it. You feel like there's no one you can really talk to, because everybody's singing from the same hymnbook, and they're not coming off that page no matter what you say."

To navigate the system, prospective wards should have a stronger legal advocate — just as someone accused of a crime is entitled to a defense, says Diane Menio, executive director of the Center for Advocacy for the Rights and Interests of the Elderly in Philadelphia.

"When we talk to wards' attorneys, they see their role as protecting that person," Menio says. "I think that's the role of the petitioner, or the judge — not the ward's attorney. We don't have attorneys in court speaking on behalf of that person."

Wards and their families are often denied a fair hearing because judges are too quick to see the potential for neglect and abuse, contends Catherine Anne Seal, a Colorado elder law attorney who is active in national guardianship issues.



“Families do things under a family system, solving a problem the best way they know, and don’t understand what the legal rules are,” Seal says. “I’ve learned to be more forgiving of a family system and believing in their motivations. Not every case needs litigating.”

Linda Fieldstone, family court supervisor for the 11th Judicial Circuit in Miami, believes the key to involving wards and families in decisions lies in intervention before the guardianship process kicks in. She has spent the past few years building massive task forces to study “eldercaring coordination” on the state and national levels, involving 41 organizations.

“I think it was pretty miraculous; we all saw the same need — the idea that a one-size-fits-all system for everybody is just not appropriate,” she says. “I found that when I started talking to people about the flaws in adult guardianship, we were finishing each others’ sentences.”

Conflict resolution, Fieldstone says, should happen before any judicial process. Many guardianship judges already send complex cases to mediators, she adds, but this has limited success for families with a lot of dysfunction.

“They aren’t going to do well in mediation,” she says, “because it’s just another opportunity to vent. Those are the ones who need the hand-holding.”

Fieldstone envisions the same kind of coordination services for elders that now exist for high-conflict divorces that affect children. Addressing their issues upfront, she argues, could avoid the adversarial nature of a guardianship proceeding.

“We found that with parenting coordination, gradually circuits opened up to the idea,” she says. “So there’s precedence for this in Florida.”

Still, Fieldstone agrees with Passidomo, the legislator, that statewide reform will be incremental.

“It has to trickle down,” she admits. “Some circuits will be very receptive, and others don’t want anything that’s going to disturb the equilibrium of whatever that circuit does.”

One question is whether change will happen soon enough for people like Linda Bous, who must now depend on a relative stranger to shop for her toiletries and sort through her belongings.

“No matter how well-intentioned a guardian is, it’s the guardian who makes the decision,” says Kristin Glen, the former New York judge. “At the end of the day, that is a huge deprivation of human dignity.”

## **'A lot of living'**

One Saturday in October, desperate for help, Bous called the Herald-Tribune newsroom.

A reporter visited her at the center, and then spoke to Marc Soss, the attorney originally assigned to represent her. Soss said he could not discuss her case in public. But, in a rare move for a court-appointed ward’s attorney, he agreed to talk to Bous and consider re-opening the case.

Last week he filed a “Suggestion of Capacity” on her behalf — the first legal step in getting her rights restored.

Throughout her ordeal, Bous has been fortunate in one regard. Her house and possessions have not yet been sold — because Himes, her guardian, has not completed the inventory of assets needed to close her late husband’s estate. The latest deadline extension, according to court records, gives Himes until Wednesday to complete this paperwork.

Himes says the fact that Bous will get a hearing in court is “evidence that the system works.”

If Bous succeeds soon in becoming one of the few wards able to convince a judge to let her manage her affairs, she could possibly have her own home still available to welcome her.

She can't wait.

“Before I came in here, I was looking for a laptop; I'm lost without a computer,” Bous says. “My relatives and my girlfriends will all be wondering what's wrong with me.

“This isn't where I plan to spend the rest of my life,” she adds. “I've got a lot of living to do.”



# UPDATE: Woman in guardianship series on edge of freedom



SARASOTA - Linda Bous left her tiny room Wednesday in the locked assisted-living center where her court-appointed guardian placed her last May, to visit the Sarasota house she had longed for and fretted about for more than eight months.

It was far from the joyful homecoming she had imagined.

Bous and her sister-in-law, Jane McElree, along with a family friend, hardly knew how to navigate the piles of belongings that covered every available surface. And they peppered Bous' attorney with questions about what will happen next.

In its December series, [“The Kindness of Strangers: Inside Elder Guardianship in Florida,”](#) the Herald-Tribune described Bous' struggle to reclaim the rights that were taken away when she was made a ward of the state. Restricted to using the center's shared telephone and unable to retain a lawyer, Bous, 67, called the newspaper in October and asked for help.

When a reporter contacted Bous' court-appointed attorney, Marc Soss, he agreed to consider re-opening her case. In early December he filed the necessary papers, and Bous was re-examined by a psychiatrist last month.

A hearing is scheduled for Thursday before 12th Judicial Circuit Court Judge Charles Williams, and she is expected to have her rights fully restored. Soss said a “joint stipulation” has been prepared that will give her guardian a period of time to return her property and give an accounting of her assets.

This would leave Bous once again in charge of her destiny, free to begin the long process of reclaiming her belongings and her personal life after more than nine months with no right to make her own decisions. She intends to live with McElree while she reassembles the pieces of her existence.

Complicating the process, said Soss and the guardian, is that Bous — the widow of an American but a citizen of Canada and Scotland — has not held a legal U.S. residency since 2010.

They said the house tour on Wednesday was part of the legal procedure of unwinding her guardianship.

The purpose of taking Bous to the home, Soss said, was “to show her what she has to deal with. I can only imagine what it's like for her, coming back into this.”

In April — when Bous was still reeling from the death of her husband in January — the Department of Children and Families petitioned the court for a temporary emergency guardianship. In June, a judge's ruling declared Bous to be incapacitated, after a hearing that she did not know she could attend, held after she had already been removed from the house she and her husband had shared.

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## Learn more about elder guardianship

The Kindness of Strangers: What

This public forum, sponsored by the

Libraries, is planned Thursday, Feb.

11:45 a.m. Scheduled panelists are

chair of the House Civil Justice Co

bill HB5; State Sen. Nancy Detert

on Children, Families and Elder A

Representative for Government A

Robinson, Chief of Geriatrics, Sar

Doors open at 10 a.m. and seating

<http://bit.ly/elderguardian>. Or c

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Even now, it is not known when Bous will legally inherit the three-bedroom house on a quiet, leafy street. Her husband of nearly 27 years — Joseph Anton Bous, a longtime coach in Sarasota schools — died at the age of 66, leaving no will, and the house is in his name. Bous' guardian, Ellen Himes, was made personal representative of his estate, which has not been settled in the year since he died.

Her husband's death, according to court records, left Bous devastated for months, unable to eat properly or even pay the bills. Someone apparently placed an anonymous call to Adult Protective Services, the state agency charged with cases of elder abuse or neglect. Bous remembers a nice man who came by and arranged to have her electricity turned back on.

Whether she remembers the condition the house was in when the state intervened was not clear on Wednesday. Bous and McElree exclaimed over the tumble of clothes, papers, books and financial records in the house. Himes and Soss maintained that the place looked and smelled better than when they first met Bous last April.

“I'm sorry that she's got the Better Homes & Gardens in her head, but it never was that,” Himes said.

Bous wandered from room to room, obviously overwhelmed.

“This is too depressing,” she said.

Bous has said that when she left her home in May, her impression was that she was going to the assisted-living facility for a few weeks' rest and recuperation.

“We were sitting out in front of my house,” Bous recalled, “and she said, 'There's a place I know of and they have a room that's open, and maybe you should go there just for a little while. It will help you feel better. Take a few clothes.' ”

Himes said in December that helping a ward make the transition from an unsafe environment often requires tact.

“I never tell them that they'll never go back to their homes,” she said. “I try to guide them around it in a better way, like, 'You're going to go live in a resort now,' as opposed to, 'You're not going back to your house because it's too big and you can't handle it anymore.' ”

Florida's elder guardianship system, designed to intervene quickly for the protection of frail and vulnerable citizens, can appear opaque to anyone hoping to challenge the rationale.

Critics have a phrase for the efficient formula guardians often use to take over the property and lives of their wards: “Liquidate, isolate, medicate.” Once its legal wheels are in motion, trying to keep an individual from becoming a ward is nearly impossible for those who lack money, access and an understanding of the rules.

And because so few lawyers specialize in guardianship, it can be difficult for wards or their families to find an attorney willing to help them seek a restoration of their rights — even when they manage to learn what steps are required.

Bills are pending in the Legislature that would make it harder for guardians and attorneys to disregard the best interests of wards under their protection, and to discourage the routine practice of ordering emergency guardianships without a hearing — as happened in Bous' case.

But on Wednesday, Himes' attorney, Jeanne Marie Bennett, said that the prospect that Bous' guardianship will come to an end “is proof that the system works.”

# Woman in guardianship series is free

All the rights that most adults take for granted — to spend their own money, to travel, to vote, to marry, to enjoy dinner out at a Red Lobster — once again belong to Linda Bous.

Bous, 67, did not hesitate today when 12th Judicial Circuit Judge Charles Williams asked her if she wanted to say anything at the hearing to restore her rights and terminate a full adult guardianship of more than nine months.

A small and soft-voiced woman born in Scotland, she spoke out clearly and briefly about the injustices she believes were done to her.

Distraught from her husband's death in January 2014, Bous had been found by a medical team to be lacking capacity to make her own decisions and was placed by her emergency temporary guardian in an assisted-living facility. In October, [her desperate phone call to the Herald-Tribune](#) set in motion the legal process that led to her freedom today.

“It was a terrible loss, to lose my husband and best friend of almost 30 years,” Bous told the judge. “But if I had had my rights at that time, none of this would have happened.”

The Sarasota resident acknowledged that when someone from the Department of Children and Families visited her home, she was ill and needed assistance. But with help, she said, she could have handled the paperwork for her husband's estate and resumed her life without him.

“I feel that I was abused,” she told the judge, “because I had no chance to speak for myself.”

Florida's elder guardianship system, a patchwork of legal and customary procedures designed to protect and care for state residents suffering from dementia or frailty, is based on a statute that is considered a model in the United States. But in practice, critics say, the statute's provisions to ensure due process for proposed wards are routinely ignored.

The system can be bewildering for wards and their families, who often lack access to legal expertise. And while someone can be placed under guardianship in a matter of days, getting out has felt like a long and mysterious process for Bous and her sister-in-law, Jane McElree.

“I have no idea what's supposed to happen next,” McElree said today. “When are we going to find out where Linda's bank accounts are?”

Florida law has a checklist of 14 rights that an elder may surrender as a result of the guardianship process. If a ward has capacity to exercise some of these rights, the thinking goes, the guardianship can be limited and less intrusive.

But in the paperwork of a typical case file, a Herald-Tribune investigation found, the examining committee members simply check all the boxes on the list of rights.

“A full or plenary guardianship should be the very last resort,” said Brenda K. Uekert, principal research consultant for the National Center for State Courts. “But in most cases that's not true. In most cases, a full guardianship is simply easier.”

Bills are pending in the Florida Legislature that would make it harder for guardians and attorneys to disregard the best interests of wards under their protection, and to discourage the routine practice of ordering emergency guardianships without a hearing — as happened in Bous' case.

Her story is unusual in one regard: It is rare for the attorney a judge appoints for the ward at the beginning of a guardianship to re-open the case later. Usually wards or their families must find another attorney to file paperwork for a restoration of rights, and pay a retainer upfront — which can range from \$3,000 to \$8,000.

Before today's hearing, Bous' court-appointed attorney, Marc Soss, returned her house keys and some identification cards. Williams ruled that Bous' guardian must provide a full accounting of all her belongings.

“The system does have checks and balances, and you have an excellent lawyer in Mr. Soss,” Williams told Bous, adding, “Good luck.”

Bous' former guardian, present with her attorney, also wished her luck when the hearing ended. Bous responded with a wry smile. But then she planted a kiss on the cheek of Soss as he gave her copies of documents in her case file — papers she had never been allowed to see.

Finally at liberty to go where she pleased, Bous left the downtown judicial center with McElree and family friend John McCarthy, quietly discussing how she might go about getting her U.S. residency status back in order. It was lunchtime, but neither of the women felt like eating anything.

Bous said her plans for the immediate future — aside from the necessary bureaucratic steps to get her life back in order — include that outing to the Red Lobster, where she and her husband had their first date, and return visits to the facility where she has been confined since May.

“I'll miss some of the people,” she said. “A lot of the people, they like somebody to talk to because they can't remember anything. I know some of them are in there forever.”

Someday she intends to travel, visiting relatives in British Columbia and Scotland. But for now, she is intrigued by the idea of a normal life.

“It'll be fun,” she said. “I have a list made up already of what I have to pick up at the grocery store.”

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## INTERESTED?

The Kindness of Strangers: What

This public forum, sponsored by the Sarasota County Public Libraries, is planned for Feb. 26 at the Sarasota County Public Library. Scheduled panelists are State Representative Sen. Nancy Detert, R-Sarasota, member of the Department of Children and Families and Elder Affairs; Diana Williams, Director for Government Affairs, Washington State University Geriatrics, Sarasota Memorial Hospital.

Doors open at 10 a.m. and seating is limited. Register [in advance](#). Or contact the library at 941-552-1234.

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Stephen Parfenoff doesn't remember falling.

The 89-year-old does remember waking up in a hospital.

He was taken there the morning of Feb. 2, 2013, according to the Charlotte County Sheriff's Office, after deputies and paramedics were called to his house by a longtime friend.

In April 2013, while Parfenoff was still in a rehabilitation facility, that same friend filed a petition in Charlotte County Circuit Court, asking the court to declare him incapacitated and appoint a guardian to make decisions for him.

"Mr. Parfenoff is paranoid that someone is stealing his money," the court petition said, "and will not relinquish his checkbook to the petitioner for safekeeping."

Two years later, Parfenoff said he and the friend who petitioned for guardianship are no longer speaking. Living comfortably in his home on a small lake, with weekly visits from an aide who brings his medications and takes him grocery shopping, Parfenoff cooks for himself and appears to keep his house spotless.

But he frets about his finances, and his future, and the possessions his guardian has sold.

"I was doing fine on my retirement, but I don't know what I've got left," he said. "I haven't been able to get any information. They took my car just recently."

In January, at his guardian's request, Judge George C. Richards removed Parfenoff's right to have a driver's license. This leaves him with only three civil rights — to make decisions about his social life, to travel and to vote.

Following a series on Florida's elder guardianship system published by the Herald-Tribune in December, a trio of bills that aim to put brakes on the legal process of stripping an individual's civil rights under guardianship laws have shown momentum in the Legislature.

If the current version of SB 1226 — Sen. Nancy Detert's bill to reform the guardianship

## IN THE LEGISLATURE

**SB 1226:** Establishes an Office of office to develop standards and actions; requires judges to appoint finds good cause for a different Senate committees. Companion bill out of three House committees.

**SB 318:** Places limits on emergency of a power of attorney; allows a mediation or alternative resolution guardianship by freezing the guardian Unanimous yes vote in two out of

## ABOUT THE SERIES

When "The Kindness of Strangers: Inside Elder Guardianship in Florida" published in December, Herald-Tribune readers were dismayed to learn a citizen's rights can be taken away and given to somebody else, for life the project's findings:

- The widespread practice of placing an elder under "emergency temporary guardianship" without a hearing can be full of legal and what is happening. A word under the Florida statute — to notification of the process, to a public hearing before rights are removed, and to unlimited court petitions for a restoration rights once the guardianship is underway — are routinely disregarded.



system — prevails this spring and wins Gov. Rick Scott’s approval, wards like Parfenoff may be given an avenue to voice their complaints.

The bill would establish an Office of Public and Professional Guardians — a new agency with the mission to oversee the work of professional guardians, and review allegations of misconduct.

In a typical Florida case, a guardian has full control of the ward’s finances and medical care. The proceeds from selling possessions such as cars, boats, guns, furnishings and real estate become part of the ward’s assets, to cover living expenses and the costs of the guardianship — which include the guardian’s hourly rate and legal fees. By law, the guardian has to make an accounting to the court of all sales and expenses. But because this information is confidential, wards and their families and friends do not have access to those annual reports.

“My particular bill is to monitor the guardians, punish the bad actors, and provide the least restrictive atmosphere for elders,” Detert, R-Venice, said at a February forum on elder guardianship.

Detert added that, like foster care for children, the state’s system to protect incapacitated elders can become overprotective, at the expense of their liberty and quality of life.

While other guardianship reform bills are attempting to tighten the standards of the current statute, Detert said her bill tackles “the human angle.” She said she wants to give adult wards and their families a formal way to make themselves heard by the state.

“I think elderly people feel invisible,” she said. “You have to tell the right person the right thing, or tell a hundred people something, before anyone is going to listen to you.”

‘A shot and a beer’

Stephen Parfenoff is a retired schoolteacher from Gary, Indiana, divorced with two daughters who live out of state. His relationship with them, he said, is “civil but cool, distant.”

Tall and dignified, he welcomes visitors to his home with impeccable manners. He also leaves multiple voicemail messages to confirm an appointment, talks elaborately about people wanting to take what belongs to him and acknowledges that he has sought treatment for “anxiety problems.”

“I’m high-strung,” he said.

Since his guardianship began, friends and neighbors have written to the circuit court for Charlotte County, claiming that his placement in a nursing home and attempts to make him a ward were “totally not called for,” in the words of his childhood friend, Don Carlson of Oxnard, California, documents show.

“During all the occasions I have had contact with Stephen,” wrote a Rotonda West neighbor who has lived across the street since 2004, “I have never witnessed ANY indication that Stephen is not capable of taking care of himself.”

Jim Powers, a friend who lives in St. Petersburg and visits Parfenoff often, has tried to find an attorney who will re-open the case. In November Powers helped Parfenoff submit a “suggestion of capacity” to circuit court — the first step in having rights restored — but the petition was not made a part of the clerk of court’s record and no hearing has been set.

“They’re charging him money for overseeing him, and he doesn’t need this,” Powers said. “He says, ‘What did I do? I only fell down.’ ”

Powers contended that Parfenoff had been overmedicated by the nursing home when he appeared in court for an emergency temporary guardianship hearing two years ago.

“He was wobbling,” Powers said. “I said, ‘Your honor, he’s been drugged.’ I said he wants his own private attorney. They said, ‘We can’t do that.’ ”

By law, anyone “interested” in a person’s welfare can petition the court to make him or her a ward. Most Florida petitions are for emergency temporary guardianship, in which a judge appoints a guardian even before an evaluation of capacity by three mental health professionals. Two of them must find the person incapacitated for the guardianship to become permanent.

Some guardianship case documents are open to the public, while many that contain medical or financial information are confidential. This account is based on public documents, and also medical reports and letters from friends that were supplied to the Herald-Tribune by Stephen Parfenoff.

Two members of his examining committee recommended guardianship, based on a medical history that apparently portrayed him as having a drinking problem, according to notes in all three reports that are part of the court file, and were furnished to the Herald-Tribune.

Parfenoff and his friends deny that he is an alcoholic.

A registered nurse noted in her report to the court that Parfenoff “wants to ‘go home,’ where he can resume drinking — great danger of more falls, being taken advantage of financially as well as a threat to his well-being.”

A psychiatric social worker’s examination report cited a daughter’s recollection of Parfenoff’s “lengthy history of alcohol abuse.” She added, “This examinee lacks insight into his inability to make informed decisions as manifested by his statements that there is nothing wrong with him.”

The third examiner, psychiatrist Douglas Shadle, wrote that “Mr. Parfenoff is knowledgeable regarding his medical problems but attempts to minimize past and present severity of those problems. Minimizes any alcohol use to ‘shot and a beer.’ ”

But Shadle’s report concluded that Parfenoff “currently does not require guardianship.”

While Shadle said he could not discuss Parfenoff’s case for publication, he called the question of whether adult guardianship is an appropriate response to chronic alcoholism

underfunded elder guardianship system draws on the life savings of wards to support the “pro bono” work of elder law attorneys and guard indigent wards.

a real important one to spend more time on.” He said the question is also “applicable to people who have schizophrenia, bipolar disorders, you name it.”

Mental health issues, including substance abuse, are not what guardianship law was designed to address, Shadle said.

“Medication compliance may make a difference, but should we be going to the extreme of guardianship to make sure that happens?” he asked. “I think we really overstep our bounds when we do that.”

James Essenson, a Sarasota attorney who specializes in guardianships, said this is a point where professionals can disagree.

“You see that with the examiners,” he said. “Libertarians look at it and say, ‘That 80-year-old person is making a bad decision, but they’re free to do that.’ Another examiner comes in and says, ‘No, I’m not going to let them spend their money that way,’ and they feel very proprietary about them.

“That’s the social work mentality,” Essenson added — “that they want to protect them; they’re not there to allow them to fall.”

Imminent harm

Specifics about how an Office of Public and Professional Guardians — called for in SB 1226 — would develop standards for the industry are yet to be worked out. But for the first time, Florida would have an agency with the authority to settle such philosophical differences.

Aside from Detert’s legislation, two other guardianship reform bills are making their way through the session.

HB 5, written by Kathleen Passidomo, R-Naples, is the most far-reaching and was produced after consultations with elder law attorneys from across the state. On March 30, a new version of HB 5 added elements similar to those in SB 318, by Sen. Miguel Diaz de la Portilla, R-Miami, which focuses on the emergency temporary guardianship process.

This fast-track procedure is intended by law to protect elders immediately from “imminent harm” — perhaps by removing them from an abusive or unsafe environment. But often — as in Parfenoff’s case — the emergency petition is routinely used to get the removal of rights underway more quickly.

The pending bills would take away incentives for this shortcut into guardianship, by requiring more notice for the first hearing and making the suspension of an individual’s power of attorney less automatic.

But Essenson, the Sarasota lawyer, said that the statute could also be more specific about what constitutes a true emergency.

“I think sometimes that got a little loose,” he said. “In some of these cases, the family members see the danger and they want the court to do something. Maybe we should define imminent harm more carefully. But it should be imminent — not that someone is susceptible to being exploited or has been exploited.”

One provision in the pending legislation sought to discourage emergency temporary guardianships by requiring the judge to replace the emergency guardian with a second permanent one. This language has been softened to allow the court more leeway.

Chris Card, chief operating officer of the nonprofit guardianship agency Lutheran Services Florida, welcomed the modification.

“A lot of guardians were very concerned about saying you automatically can’t continue” from a temporary to permanent status, he said. “For most of this work, a lot of the initial work is done on the front end of the case — finding all the assets, and making sure that you really get to know the client.”

Overall, Card predicted that the effect of reform legislation will be positive for guardians and wards.

“So far the bills that we’ve seen have put in some appropriate tightening,” he said. “We want to do anything we can do to re-establish and reinforce confidence and trust in the system.”

Another facet of the reform legislation that has drawn objections in the industry is the idea of matching guardians to wards on a rotating basis, or “wheel.” The intent is to prevent cronyism, but Card said the bills’ wording gives judges wiggle room on this as well.

He added that Lutheran Services — now with 75 to 80 percent of its caseload composed of indigent wards, supported by public funds — is unlikely to be much affected by the rotation method.

“We wouldn’t have suggested such a process,” he said. “We believe most of the time that the judge’s discretion is better; he or she can determine what the best fit is.”

Essenson said that prospective wards should have a say, when possible, in selecting their guardian.

“They want someone they can get along with, who has the same philosophy,” he said. “Guardians — like everyone else — have their own proclivities. Some are very officious. You’ve seen what happens; it’s very dehumanizing. They’re inventorying stuff, counting the teaspoons, the pairs of shoes; it’s horrible.”

He would also like to see lawmakers tackle an issue that does not appear in any of the current bills: the inability of established wards like Parfenoff to find an attorney who will speak for them in court. For most, their lack of access to their own money is a barrier. In Parfenoff’s case, his friend Powers has offered to pay the legal retainer — but finding a guardianship attorney willing to challenge a court’s previous finding is often difficult.

“You have these rights, and it’s enshrined in the statute; you don’t give up your right to counsel just because you’ve been adjudicated,” Essenson said. “How does that person get legal counsel? The court-appointed lawyer is discharged as soon as the first report is issued.”

Unlike their wards, professional guardians in Florida are represented by attorneys for the duration of the case.

“When I talk to people in other states, they find that kind of peculiar. First of all, it’s very expensive,” Essenson said. “The guardian, who doesn’t need a lawyer, has a lawyer,

and the alleged incapacitated person has no lawyer. That's a legislative problem.”