

News

Gigian, Rebecca, and Scott Mulligan ([Rebecca Gibian](#) and [Scott Mulligan](#)), 'Incapacitated' People's Homes Are Being Sold by Their Guardians With Little Scrutiny, Vice (Aug. 8, 2023), <https://www.vice.com/en/article/guardianship-home-sales-florida/>

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The knock on Jan Garwood's door one afternoon was unexpected. Garwood had been through a lot in the last few years: She suffered a major car accident, one of her sons died, and a fall caused her major neck and head injuries. And then, someone—she still isn't sure who—tipped off professional guardian Rebecca Fierle of Garwood's precarious health, encouraging Fierle to file a petition to put Garwood into guardianship. A guardianship installs a surrogate decision-maker for people who, for whatever reason, can't make choices about their life, including their finances, healthcare, and living arrangements, and the person who showed up at her Florida home that day in 2017 was her new guardian. They'd come to tell Garwood that she was now under guardianship—and to take away her house keys.

For the next three years, Garwood struggled to find a way out of the unwanted guardianship. During that time, she lost everything. Two years in, while Garwood was stuck in an assisted living memory ward, her house was sold to an employee from the facility where she was living, who was also related to an administrator there. Her guardian had to request the sale through the court, and Garwood was allowed to speak at the hearing. A former real estate agent herself, Garwood [asked the court not to sell](#), saying the sale was “not right.”

But the sale went through.

Finally, Garwood used a phone smuggled into the assisted living facility by her son and with the help of a nurse, she posted a desperate plea on Facebook, asking for someone to help her get out of the guardianship. By a stroke of luck, an advocate saw her post and helped get Garwood released. But when she walked out of the hospital for the first time in three years, she found there was little left of her former life.

VICE News has identified over a dozen cases like Garwood's in Florida public records from the last six years, of guardianship wards' homes being sold for cheap in potentially shady deals. Sometimes the buyers were real estate agents who later flipped the home for a profit. In other cases, the houses were sold to the agent's friends or family members. In each of these sales, the guardian profits because they're paid out of the ward's accounts. And while some guardians sell low out of negligence, others have been charged with committing fraud, and the entire process leaves rooms for personal profit making.

Advocates and experts claim that because of a lack of regulation at the state or federal level, the guardianship system is ripe for exploitation by guardians who want to profit off the people they're supposed to be helping. And because the people who find themselves in a guardianship

are sometimes vulnerable individuals without family members to take care of them, guardians can take advantage without pushback from a person who knows and cares about the ward.

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“Unfortunately with guardianship, there is such the near-occasion of sin. The temptation is so strong, and there's no safeguards... that temptation is just so strong and out there,” said Ken Burke, Clerk of the Circuit Court and Comptroller for Pinellas County and the former Head of the Guardianship Improvement Task Force in Florida.

A flawed system

In Florida, anyone can [submit a petition to determine](#) another person's incapacity. Once a petition is filed, the court appoints an examining committee consisting of three members, which then conducts an evaluation and gives that to the court. Once a person is deemed incapacitated, they are made a ward of the state and a guardian is appointed by the court to make both financial and personal choices for the ward.

Some advocates say the process of initiating a guardianship is unfair, as the examining committee is not always made up of people whose expertise is in mental capacity. Hillary Hogue, the advocate who answered Garwood's plea, also fought to get her father out of an unwanted guardianship. There is [always a licensed physician](#) on the panel; for Hogue's father's hearing, that doctor was a gynecologist.

“So his whole career was spent looking at women's anatomy, in that sense, nothing to do with mental issues,” she said during a phone interview with VICE News.

The existence of this committee, however, makes the process more stringent in theory than in other states, which typically require one medical professional to conduct an incapacity evaluation. And some changes to the Florida law have been made following major revelations about fraud and abuse in the system. For example, when Garwood was [deemed incapacitated](#), a professional guardian could file a petition to initiate a guardianship against anyone. However, in 2020, [Florida restricted guardians](#) from filing petitions unless the guardian is related to the person.

According to a 2018 report by the National Council on Disability, [there are an estimated 1.3 million Americans currently under guardianship](#), but the true number is hard to pinpoint, because most states don't keep databases of guardians or wards. Due to this lack of data, in May of this year, Sen. Bob Casey (D-Penn.) and Sen. Mike Braun (R-Ind.) of the Senate Special Committee on Aging sent a [letter](#) to the U.S. Government Accountability Office (GAO) asking the office to examine guardianship laws and reform efforts across the country.

Irene Rausch, a professional guardian for over 40 years and a major contributor in the development of Florida's training materials for guardians, said that as the [state's aging population grows](#), many people lack familial help.

“They’re down here on their own with no support system,” she said. “So who’s going to step up?”

Some guardians bill hundreds of dollars an hour to the ward’s estate, and one guardian can have hundreds of wards.

Currently in Florida, any adult can become a legal guardian after a background check and [40 hours of training](#). Continued education is required as well. The fees guardians charge vary, but [some guardians](#) bill hundreds of dollars an hour to the ward’s estate, and because the state puts no cap on how many clients a private guardian can have, one guardian can have hundreds of wards. In the most extreme scenario, the guardian can take over all the ward’s communications and assets, potentially leaving the ward with little to no ability to live their own life.

The pitfalls of protection

In 2021, the [Guardianship Improvement Task Force](#), headed by Burke, heard complaints from people across Florida, as well as recommendations about how to improve the guardianship system. They held eight meetings in total, and the recommendations included data transparency, statewide uniformity in processes and practices, increased oversight, safeguards, court monitoring, and enhanced education and qualification requirements of professional guardianships. Rausch presented the professional guardian’s perspective, giving recommendations on continuing education and guardian fees, among others.

While Garwood, whose story was originally reported by [WFTS ABC Action News I-Team](#), languished in an unwanted guardianship, Rausch was attempting to fix the system from within. She created her own curriculum for guardianship training because she disagreed with the state-mandated one. She mentors new guardians, still has five active wards, and is the author of a handbook for guardians, “A Practical Guide to Guardianship.” She says that many guardians join the industry for the right reasons: to make sure that elderly and disabled people have support and protection.

“It’s not a job. It’s a calling,” said Rausch. After getting a masters degree in Applied Anthropology, Rausch worked at a senior center in Florida, going door-to-door asking seniors about their needs and hooking them up with services. From there, she got into guardianship.

Rausch concedes that fraud, mismanagement, and harmful guardianship practices exist due to flaws in the system, but she thinks the majority of guardians are doing good.

“The papers never print the good guardian stories, the successes, nobody wants to hear that. They want to hear the dirt. So it makes all of us look bad,” said Rausch.

But evidence shows the problems in guardianship may be more widespread than that, with people knowingly taking advantage of the system—including those who took control of Garwood’s home and estate.

During her years in guardianship, Garwood had two guardians: Rebecca Fierle and Denise Willis. Fierle recently [made headlines in Florida](#) when she was charged with the 2019 death of one her wards, Steven Stryker. It was later revealed that she regularly filed Do Not Resuscitate

orders on her wards, among other offenses, such as double-billing wards, over-charging assisted living facilities, and pocketing refunds meant for wards. At times, Fierle had [hundreds](#) of wards in her care. Her professional guardianship license has since been revoked, and she currently awaits sentencing for neglect of an elderly person after accepting a plea bargain.

Meanwhile, Denise Willis is also no longer a practicing guardian following various [infractions](#) cited in an order revoking her license, including reimbursing herself for “purchases for a ward” without court approval or receipts, failing to provide the court an accounting of ward’s assets, failing to provide a guardianship plan to the court, which updates a judge on a ward’s condition, and neglecting to visit, or even electronically check in on a ward for more than 13 months. Neither Fierle or Willis responded to a request for comment.

“What we’re seeing is guardians taking advantage of incapacitated persons, taking advantage of significant family discourse and the chaos that results in, and committing fraud against the person that the system was intended to protect, against the integrity of all others that are in the system,” said Anthony Palmieri, Deputy Inspector General and Chief Guardianship Investigator for the Palm Beach County Clerk of the Circuit Court and Comptroller. “Because frankly, the bad stories out there are deteriorating the public’s trust in a system that is really a necessary system, a last resort... for truly people that need help, their safety, their health, their welfare is compromised and the court has to step in to protect those people.”

After Hillary Hogue saw Garwood’s Facebook post, she sought help from Florida attorney Vito Roppo. When he spoke with Garwood for the first time, Roppo was surprised she was in a guardianship at all.

“She sounded perfectly capable of making decisions herself when I asked her the history of her case and talked to her about her current situation,” he said. “She was able to recite it all, which a lot of times people who are in guardianship, especially elderly people, they can’t give you a correct recitation: where the case is and where they are, what year it is, who’s the president, just really basic things... and she was able to do all that, in fact very well. So it was a little shocking that she was in this situation to begin with.”

But by the time Roppo got involved, Garwood’s house had already been sold.

The price of a ward’s home

While Garwood was residing in a memory ward in an assisted living facility, Willis, then Garwood’s guardian, proceeded to put Garwood’s home up for sale. In order to make a major decision, like selling a ward’s home, the guardian has to request approval from a judge. When Willis petitioned for the sale, Garwood fought the sale in court.

Despite Garwood’s pleadings, the judge ruled that Willis was permitted to move forward with listing the property at \$260,000. No formal appraisal was done on the property, and the court-approved list price was [\\$50,000 less than the tax assessment value](#) and over \$100,000 less than the Zillow estimate. Through a review of real estate websites, VICE News found that comparable houses in the same neighborhood went for \$300,000 to \$350,000. The judge approved the \$260,000 listing because Willis claimed the home was in a “distressed condition” and needed

repairs—but, filings show that repairs on the house and maintenance on the pool were being paid for with funds from Garwood's account, [Guardian Special Needs Trust](#).

Willis received an offer of \$250,000 before she even listed the property. That offer was from the daughter of the administrator of the living facility Garwood was put in, and the daughter also served as director of marketing at the facility.

Willis petitioned the court to accept the offer, even though it was lower than \$260,000, saying it was more than Garwood would get if the home was listed and sold for \$260,000 (since it was a direct sale, she cut out the 6% real estate commission). The court approved the sale at \$250,000.

According to WFTS, records show that Willis deposited \$171,000 from the sale of Garwood's home into a special needs trust. Garwood would be able to access this money once she was out of the guardianship—but she and Roppo told VICE News that by the time she was released, Willis and attorneys had drained much of the money from the sale to pay costs including Willis' guardianship fees and attorney fees.

Through our investigation, VICE News looked through dozens of sales, finding many that resembled Garwood's: Houses owned by people under guardianship that were sold at bargain prices. Some, like Garwood's, are still held by the initial buyer. Others got minor fixes (or in some cases, no documented fixes at all), and were sold at twice the previous selling price a few months later.

One ward's home was sold for \$35,000 and was flipped less than four months later for over \$70,000. In one case, a home was sold for \$192,000 and sold just two weeks later for \$230,000. Another was sold for \$47,000 and flipped less than three months after for \$137,000. A \$230,000 home was flipped for \$320,000 less than four months after the guardian sold it. And a \$70,000 home was flipped for \$240,000 seven months later.

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The guardian has a fiduciary responsibility to their ward that requires them to obtain the fair value for any possessions the guardian sells. But proving that the guardian violated this fiduciary duty can be difficult, particularly in the volatile housing market. Additionally, the homes of wards can fall into disarray—sometimes due to the ward being unable to upkeep it due to physical or mental illness—and therefore, they can naturally become lucrative ventures for someone interested in flipping. Guardians also cited in their petitions the need for quick money to cover expenses for the ward.

There is one safeguard meant to avoid exploitation or unfair sales: judges have to sign off on home sales. However, since the real estate market is in constant turbulence, judges often defer to the guardian's judgment or a Comparative Market Analysis (CMA), done by whoever the guardian chooses — sometimes the real estate agent the guardian is working with to sell the home. Official appraisals aren't required and aren't sought in many instances, because some guardians claim that the appraisal would cost too much. Even if an appraisal or CMA is done, it doesn't necessarily represent the home's true value. As President and broker of Florida State

Realty Group, Stephen McWilliam claims, “What’s the property worth? What somebody will pay for it.”

Some wards’ homes never even reach the market and are sold to someone who promises a quick sale in cash. But Roppo said that there are “very few situations” he could think of where a guardian would need money that quickly to take care of their ward.

“Even if you need to do a fire sale on a property, there’s no reason that you can’t put it on the market for a week or two weeks and take the best, highest offer,” said Roppo. “I think that the best thing to do is to always put it on the market and let the market dictate the price you get, because you can never walk away from it thinking ‘I could have gotten more.’ You can never walk away from it thinking that you got ripped off.”

McWilliam, meanwhile, claims that, “Not allowing the free market to determine the value, could potentially result in the sale being less than they would have gotten had they gone to the open market,” but he also commented that if the house is in disrepair, it can be hard for someone to get financing to purchase the home so deals outside of the free market could be beneficial for the seller.

Investigations into an ever-changing market

Palmieri, in his role as Deputy Inspector General, and his office investigate cases of fraud within guardianships, the vast majority of which are personal issues such as visitation, isolation, right to association, frivolous spending by the guardian, or a disagreement on how the guardianship assets are being used.

But in 2022, Palmieri’s office investigated a guardian for selling multiple wards’ homes far below market rate and for allegedly colluding with the real estate agents.

According to Palmieri’s report, in one instance, the real estate agents sold a ward’s home to one of the agent’s brothers, who flipped the home four months later for nearly \$80,000 more than what he paid for it. In another case, the ward’s home was sold to a trust for \$120,000; the trust then sold the home back to the real estate agents for \$100. They flipped it less than six months later for \$298,000.

In the third case, the same guardian and real estate agents sold a ward’s house to one of the agent’s business partners, who flipped it three months later for \$130,000 more than they paid for it. In May of this year, the guardian was reprimanded by the [Office of Public & Professional Guardians \(OPPG\)](#) and required to complete 8 hours of continuing education for this sale in particular. VICE News cannot verify if the guardian completed these hours.

In each of these cases, the property was either not listed publicly for the initial sale or listed as “pending sale” on the day of listing. The agents handled both the initial sale and the flip.

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VICE News found an additional home belonging to a ward that was sold by the same agents. The home was sold to an acquaintance of one of the agents, as shown through a Facebook post showing the agent's brother and the buyer together at the brother's bachelor party, renovated by the agent's brother, and then listed 6 months after for over \$220,000 the initial sale price. It sold two months later, at the higher price. Neither agent responded to Vice's email request for comment.

VICE News found that the guardian sold another home, this time working with a different pair of real estate agents. The home was bought for \$305,000, and then sold for over \$500,000 four months later.

Palmieri submitted his report to the sheriff's department, who then passed it off to Florida Department of Law Enforcement (FLDE). A few months ago, FLDE told Palmieri that they were not going to take the case because there is not enough evidence to suggest a crime had been committed.

"FDLE initiated a preliminary inquiry, which included in part, the review of documents from your office related to the complaint. Following the completion of the preliminary inquiry, no evidence was developed to substantiate a criminal predicate, therefore, FDLE will not initiate a criminal investigation into the matter at this time," the response said.

FLDE, in response to a request for comment, told VICE News, "After reviewing all materials and conducting interviews, agents found [the guardian] received a court order to sell the property. Because of the court order granting her permission to sell the property, no criminal laws were violated. Without criminal predicate, we were unable to move the case forward."

The guardian in question is still active, and has nearly 20 wards, based on a VICE News review of court records. The guardian did not respond to VICE's request to comment, and OPPG denied multiple requests for interviews.

McWilliam, a broker himself, reviewed the home sales and determined they were not unusual in terms of profit margin given the renovations that occurred in between the sales periods. Therefore, although there may be hundreds of thousands of dollars in difference in total between all the flips, the profit was most likely far less than that. While the system allows room and opportunities for fraud to occur, it is hard, if not impossible, to tell if it is happening purposefully.

"I think what we're seeing throughout the state is a system that is not uniform," Palmieri told VICE News. "There's no consistency amongst the 67 counties, the [20] Circuit Courts throughout the state. What we're seeing is business processes, guardian practices that have, in some cases, have gone unchecked for, five, ten, fifteen, twenty years, and then a complaint is lodged and then all of a sudden we're applying ... the statutes and the standards to that guardian's practice. And, frankly, any practice going on unchecked has the capability of kind of going off the rails."

Burke, for his part, does not think the courts are best positioned to decide if a guardian should be allowed to sell a house, and for what price. Instead, Burke says, the market "should dictate some

of this,” and the home should be listed for a set amount of time to receive offers that all must be considered equally.

“Judges are basically trained to call balls and strikes on the law, they’re not trained in this area,” said Burke, whose office is also in charge of auditing guardianships. “This is a very odd area of the law compared to everything else they do. [In a] civil case or divorce case, you have two parties who are fighting each other, so the judge kind of acts as the mediator. When they get a thing to sell a house, and there’s a market analysis done by a realtor, who’s the other side to say, ‘Hey, this isn’t right?’ There is no other side.”

He also thinks there should be a follow-up on any ward property that’s sold by their guardian, to check it was not flipped for profit to the detriment of the ward.

“Within six months, we should be seeing: ‘Hey, has that property changed hands again into great profit, and no permits were pulled for improvements?’ and so forth,” Burke said.

The Guardianship Improvement Task Force presented its recommendations in January 2022, which resulted in a bill, sponsored by Florida Representative Linda Chaney, to create a [statewide database](#) of guardians and their wards. Currently, there’s no easy way for a judge to check how many wards a guardian already has before assigning them a new one.

Burke, who is assisting in the creation of the database, said he’s very proud of the project, and he hopes it will be completed by the end of this year.

But advocates say the industry needs other reforms. When it launches, the database will not track financial information like the total amount a guardian and attorney are making in fees a year or how much money is currently being held by wards in total throughout the state, which Palmieri says is an oversight. Burke said that he hopes once the database goes live, additional fields will be added.

Among her recommendations to the Guardianship Task Force, Rausch suggests raising the number of continued education hours required for guardians to remain active. She says that despite the abuses Garwood and others have experienced, guardianship is necessary and generally good.

“I think there’s so many people doing so many good things, and no one hears about it. And it’s incredibly rewarding, but incredibly challenging,” she said.

Hogue sees it differently. “In the almost six years that I’ve been advocating for changes, I’ve never heard not one family member come out and say, ‘guardianship was the best thing that ever happened to my mother, my loved one,’” Hogue told VICE News.

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The human cost of the holes in the guardianship system are hard to quantify, especially since the database is still in the works. And if Garwood’s case is any example, it is clear that guardianship, if mismanaged or fraudulent, can destroy someone’s life.

These days, Garwood shares an apartment with her son Alex and his girlfriend. Her car was sold and many of her possessions were thrown away while she was under guardianship. She had “everything stolen from her,” she says, and now lives on food stamps. Her clothes and furniture come from Goodwill and thrift stores. Her health is shaky—she is currently bedridden, and her son is taking care of her—and she lives in fear of getting placed back into a guardianship and once again being unable to communicate with her friends and family.

When Alex came to get her from the facility she’d been locked in for three years, Garwood stood waiting for him by the elevator door. As they hugged, Garwood told him, “I don’t want to let go.”

“We have all the time in the world now,” Alex replied.