

Introduction

FINANCIAL EXPLOITATION BY CONSERVATORS

- A SERIES OF EIGHT BACKGROUND BRIEFS -

Despite the financial and psychological impact of conservator exploitation on victims and their families, there is little information on its extent and consequences. Thus, the U.S. Department of Justice Office for Victims of Crime funded the National Center for State Courts (NCSC), in partnership with the American Bar Association Commission on Law and Aging (ABA Commission), the Virginia Tech Center for Gerontology (VTCfG) and the Minnesota Judicial Branch, to assess the scope of such exploitation and explore its impact on victims. The project team produced eight Background Briefs:

- Examples of Conservator Exploitation: An Overview
- Conservator Exploitation in Minnesota: An Analysis of Judicial Response
- Detecting Exploitation by Conservators – Court Monitoring
- Detecting Exploitation by Conservators – Systemic Approach
- Court Actions Upon Detection of Exploitation
- Innovative Programs that Address Financial Exploitation by Conservators
- Data Quality Undermines Accountability in Conservatorship Cases
- Supporting Victims of Conservator Exploitation

Accompanying the Background Briefs is a list of key resources on conservator exploitation.

Because state terminology varies, it is important to clarify key terms.

- In the project, conservator is defined as an individual or entity authorized by a court to make property or financial decisions for an adult who the court determines is not able to make those decisions. State statutes may use

other terms such as “guardian of property” or “guardian of the estate.” Court-appointed conservators include family members and other non-professionals, attorneys, private for-profit and non-profit professionals and agencies, and public guardianship programs.

- A guardian is an individual or entity authorized by a court to make health care and other personal decisions for an adult who the court determines is not able to make those decisions. Sometimes “guardianship” is used as a general term covering both guardians making personal decisions and conservators making financial decisions. A conservator may also be appointed as a guardian.
- A conservator is a fiduciary – someone entrusted with the management of property of another, and who owes a high duty of trust, honesty, care, confidence, and good faith.
- Exploitation is defined by the National Center on Elder Abuse as the illegal or improper use of a person’s funds, property or assets. State definitions vary.

NCSC in 2016 estimated, based on projections, that there are approximately 1.3 million active adult guardianship or conservatorship cases in the United States and at least \$50 billion in assets under conservatorships (see Data Quality Brief). Also in 2016, the U.S. Government Accountability Office (GAO) found that “the extent of elder abuse by guardians nationally is unknown due to limited data . . .”¹ While many conservators are trustworthy, dedicated, and provide critically needed services, multiple media accounts over many years profile instances in which conservators have breached their fiduciary duty – taking advantage of those they were charged with protecting. As early as 1987, the Associated

¹ U.S. Government Accountability Office, The Extent of Abuse by Guardian is Unknown, But Some Measures Exist to Help Protect Older Adults, GAO-17-33, November 2016.

Press landmark report, Guardians of the Elderly: An Ailing System, found “a dangerously burdened and troubled system that regularly puts elderly lives in the hands of others . . . then fails to guard against abuse, theft and neglect.” Subsequent media stories have made similar observations.

The OVC-funded project collected information on conservator exploitation, as well as the laws and practices in place to prevent, detect and act on such exploitation. This series of Background Briefs is intended to bring about greater public awareness and understanding of the issue. The briefs are aimed at a broad audience including practitioners, advocates, and policymakers, as well as courts and judicial staff.

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