



Mistreatment and Abuse by Guardians and Other Fiduciaries

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What is abuse by guardians?

While courts make efforts to ensure that guardians are trustworthy, some guardians have taken advantage of people in their care. The

mistreatment could be financial, physical, emotional/psychological or any other type of abuse of an older person or person with a disability. Guardians also may neglect the people for whom they have a responsibility to provide care. These [perpetrators of abuse](#) can be anyone serving as a guardian (family members, trusted others, non-profits, professional guardians, agencies).

There is currently limited information on the number of guardianship cases involving abuse. The [U.S. Senate Special Committee on Aging](#) and the U.S. [Government Accountability Office](#) have highlighted the problem and cited anecdotal information. The [National Center for State Courts](#) has found that most reports on the problem of exploitation by guardians lack empirical data. Reports of fraud or other malfeasance by guardians have most often involved financial exploitation, but other types of mistreatment are also reported. Abusive acts by guardians may meet the definitions for various state and federal crimes, depending on the facts of the case. Guardians might be charged with such crimes as elder abuse, embezzlement, larceny, money laundering, theft, and neglect.

For an explanation of how guardianship can be a vehicle for abuse as well as a remedy, see the National Center on Elder Abuse issue brief, [Guardianship: Remedy vs. Enabler of Elder Abuse](#).

To learn about how to spot mistreatment by a guardian and what to do about it, see the National Center on Elder Abuse flyer, [What if Your Guardian is Not Doing What They Should?](#)

How can the courts with jurisdiction over guardianship cases respond to abuse?

A court with jurisdiction over a guardianship case might uncover evidence of abuse through monitoring, or a person or government agency might need to file a complaint or petition the court to respond to the mistreatment. These courts can take the following types of actions:

- **Freeze assets and/or restrict accounts** – Courts may take these actions to limit a guardian’s access to money and property while investigating a case or preparing to take another protective step.
- **Investigate allegations of malfeasance** – Once allegations of abuse have been made, courts can appoint a guardian ad litem, investigator or visitor to investigate. A court can also audit an individual’s assets or order an accounting by an external entity such as a certified public accountant.
- **Order repayment for lost assets or property** – Such orders might restore lost assets but, in many cases, the only way to recover funds is through a bond that the guardian obtained upon appointment. Sometimes courts do not require bonding when the guardian is appointed, making it more difficult to obtain repayment for losses at the hands of the guardian.
- **Enforce statutory rights to communication and visitation** – When abusive guardians use isolation tactics, family members and others may be able to seek orders enforcing state laws that define the rights of people subject to guardianship to interact with others of their choosing.

- **Appoint a co-guardian or limit the powers of the guardian** – This strategy may help deter or stop mistreatment by a guardian.
 - **Remove the guardian** – Removal may be the best way to stop guardian malfeasance, and petitioners might suggest a willing and suitable replacement.
 - **Terminate the guardianship** – Less restrictive options or changed circumstances might lead a court to terminate the guardianship entirely.
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Besides courts with guardianship jurisdiction, who can address abuse by guardians?

Numerous federal, state, and local government entities and non-profit agencies can respond and provide services when someone suspects that a guardian is mistreating an individual. Although the court has the sole power to impose certain orders such as removing the guardian or surcharging bonds, other entities can get involved and assist victims.

These include:

- **Adult protective services** – Anyone suspecting mistreatment by a guardian should report to adult protective services. Find your state or local adult protective services agency through the [Eldercare Locator](#). Most states have laws making certain categories of people mandatory reporters of elder or vulnerable adult abuse.
- **Protection and advocacy systems** – Protection and Advocacy Systems are federally-mandated state-based organizations that work to protect the rights of people with disabilities, including

guarding against abuse. Find your protection and advocacy agency [here](#).

- **Long-term care ombudsmen** – If the individual resides in a nursing home (or, in some states, receives home- and community-based services), the long-term care ombudsman can investigate and resolve complaints about abuse, neglect, and exploitation, including complaints about guardians. Anyone can file a complaint, but the resident (or an appropriate representative) must consent in order for the ombudsman to investigate and share information. Learn about the ombudsman program [here](#) and [find](#) your local ombudsman.
- **Law enforcement** – A guardian’s breach of duty may violate criminal laws and warrant investigation and prosecution. In addition to reporting to Adult Protective Services, individuals suspecting guardian abuse should report it to law enforcement. Contact your local law enforcement agency, your state attorney general, or call 911. Some recent examples of guardianship fraud cases pursued by the United States Department of Justice include cases in [Pennsylvania](#) and [Florida](#).
- **Attorneys** – Separate from the guardianship system, there are various civil actions that may apply to abuse by guardians. Depending on state law, civil attorneys might bring cases alleging breach of fiduciary duty, breach of contract, fraud, undue influence or a private right of action for elder abuse. Remedies might include restitution (repaying money lost), voiding documents including deeds, or other monetary awards of damages.
- **Federal agencies** – If the guardian also serves as a Social Security representative payee or VA fiduciary and is misusing public benefits, individuals may report to the Social Security Administration [Office of the Inspector General](#) or the VA [Office of the Inspector General](#).
- **Professional licensing boards** – In some states, professional guardians may be certified, licensed or registered. State boards can

investigate and may revoke a license or certification. If the guardian is a lawyer, the state has a committee that takes disciplinary action when a lawyer violates professional responsibilities.

What is power of attorney abuse?

Powers of attorney give a trusted person (the agent) a great deal of authority and access to money and property, without regular oversight. [Power of attorney abuse](#) can take many forms. The agent might spend the individual's money on items for his or her own use rather than for the individual's needs. The agent might do things that the document doesn't allow, such as making gifts when that power hasn't been granted. The power of attorney document itself might be forged or fraudulent in some other way.

State laws may help to prevent or limit power of attorney abuse. For example, the [Uniform Power of Attorney Act](#), adopted in over half the states, permits a third party such as a bank to refuse to honor a POA when the abuse is suspected, and the third party reports it to an adult protective services agency.

What are the remedies to address power of attorney abuse after it occurs?

Lawyers may help people to stop power of attorney abuse and to get money back that has been improperly taken by the agent. For example, a lawyer could:

- Draft a document to revoke (cancel) the POA
- Ask a court to require the agent to file an accounting to see how the agent has spent the money
- File a civil action to cancel contracts or deeds that the agent should not have made
- File a civil action to recoup money
- Petition a court to appoint a guardian who can manage the finances if the individual is unable to manage money independently

In addition, agents under a POA may be prosecuted for abusing a power of attorney. Depending on state criminal law, power of attorney abuse might be theft, fraud, embezzlement, money laundering, exploitation or another financial crime. Through the criminal court process, a prosecutor could ask the court to freeze the individual assets to prevent further abuse and could also seek restitution (repayment of money taken).

What do we know about abuse by government fiduciaries?

Reports from the [Social Security Advisory Board](#), the Office of the Inspector General for the Social Security Administration, the Government Accountability Office, the National Academy of Sciences and other government and quasi-governmental entities over the past

fifteen years have documented abuse by both individual and organizational representative payees. These incidents have prompted removal of payees from the program and, in some cases, criminal prosecution. The [Office of the Inspector General](#) for the Department of Veterans Affairs also has investigated and substantiated allegations of abuse by VA fiduciaries.

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