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# Scott signs elder guardianship bill; but for some, it's too late

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Lori Smith embraces her mother, Bunny Garst, after a hearing March 1, at the Manatee County Judicial Center, where a judge authorized her husband's guardian to move him from his Bradenton ranch to a long-term care facility. At right is Bunny Garst's attorney, Lisa Bell. STAFF PHOTO / BARBARA PETERS SMITH

By Barbara Peters Smith

Published: Thursday, March 10, 2016 at 1:31 p.m.

















With Gov. Rick Scott's signing of a landmark guardianship reform bill on Thursday, adult wards of the state and their families will for the first time have a number they can call for official intervention, without having to go through an attorney, when problems arise.

The bill, authored by Sen. Nancy Detert of Venice, is intended for Floridians trying to challenge the complex legal system that strips citizens of their rights after they are deemed incapable of making their own decisions. It establishes a new Office of Public and Professional Guardians, which will monitor the people paid to handle those wards' affairs, and review allegations that this sweeping trust is being violated.

Detert has said the law "will be the model for the other states," and was inspired by the anguish of family members who have told their stories in Tallahassee to press for systemwide reform. She called the bill her "absolute top priority" for this year's session, her last as she leaves the

Legislature to run for the Sarasota County Commission.

"I would be frankly devastated to leave the Senate without having finished that job," she said after Scott signed the bill.

Detert had tried to get the measure through the Legislature last year, but it failed, in part because of Scott's concerns. This year, the governor was on board.

"We couldn't have done it without him, because we tried doing it without him and it didn't work," Detert said. "The governor himself heard from lots of people in his travels, because Naples is one of the target areas for unscrupulous folks preying upon elderly wealthy old ladies. He heard it first hand. He was very supportive. I never doubted that he'd sign it. I'm thrilled that he did. He said he would come to our community and do a ceremonial signing, which will be great."

For many of the families profiled in the Herald-Tribune's ongoing coverage of this topic, the new standards and scrutiny amount to a welcome change that will come too late for them personally. This month Bunny Garst of Bradenton saw her husband lose his last remaining right — to choose where he lives — after his family's costly legal struggle of more than three years with his professional guardian.

She wonders whether his case might have unfolded differently, if she could have had early access to what Detert has called a "complaint department."

"We have to have somewhere to turn," said Garst, who retained a series of attorneys in an effort to reverse her husband's assignment to a paid guardian — and fight that guardian's actions to sell off her husband's property. "The frustration is that all this is going on and you're totally helpless."

In September 2011, Garst called Florida's Adult Protective Services and asked for an investigation of her husband's living situation. She was concerned, she said, that Claflin Garst Jr., a former Manatee County judge, had rapidly advancing dementia and was being unduly influenced by an employee. When she and the employee both petitioned to be named guardian, the judge appointed a professional instead.

The only right Claflin Garst retained in these proceedings was the freedom to choose his residence, and for years he remained at home with paid caregivers on his buffalo ranch — where friends and family contend that it was difficult to visit him. In February his guardian asked the court to remove that right and allow placement in a facility that offers memory care.

"Due to the deteriorating condition of the ward," the petition states, "the aides are not able to provide the level of service required to maintain him in a safe nurturing environment."

"That ranch means everything in the world to him," said Bunny Garst, who was visibly upset after this petition was granted on March 1.

The guardian did not respond to a request for comment, and Claflin Garst's court-appointed attorney declined to comment.

Along with his order, 12th Judicial Circuit Chief Judge Charles E. Williams called for a status conference in 90 days to assess the ward's condition, and "strongly encouraged" his guardian and family to consider using a new, voluntary Eldercare Coordinating program to resolve their ongoing differences. But Bunny Garst said her attorney advised her that such a step at this stage would be "too little, too late."

The number of professional guardians in Florida has grown from 23 in 2003 to nearly 500 today, and is expected to climb as the baby boom generation ages.

In a December 2014 series, "<u>The Kindness of Strangers</u>," and followup stories, the Herald-Tribune chronicled the struggles of wards and their families with an underfunded legal system that draws on the life savings of wealthier wards to support the "pro bono" work of attorneys and guardians for indigent wards. The project also found that wards' rights under the statute were routinely disregarded, and that the practice of placing elders under "temporary emergency guardianship" typically led to permanent guardianship before anyone could contest the process.

Sam Sugar, an Aventura physician who founded an organization called Americans Against Abusive Probate Guardianship, said recent reforms to the system have been limited in scope, and more profound change is needed.

He worried that Detert's bill, while establishing state oversight, still leaves the burden of proof on wards and their families. And it does not allow for criminal prosecution of wrongdoing by guardians.

"The bill does nothing, absolutely nothing, to address grievances for active guardianships," he added, "or those that have been closed by virtue of the death of the ward. The guardianship racket is so complicated and well-entrenched ... it may take something far stronger than this type of bill to adequately address it."

#### WHAT THE NEW LAW WILL DO

- Encourage courts to consider appointing guardian advocates as an alternative to full guardianship.
- Place the Florida Secretary of Elder Affairs in charge of a new Office of Public and Professional Guardians.
- Fund the office with six full-time staff positions in the first year, and a recurring budget of almost \$700,000.
- Direct that office to establish standards for guardians by Oct. 1.
- Generate procedures for monitoring guardians and looking into allegations against them.
- Create a way to discipline guardians who fail to meet professional standards.
- Establish a training program for guardians.
- Spell out grounds for discipline or penalties.
- Establish a matching grant program to fund local public guardianships for indigent wards.

For more information on adult guardianship in Florida, go to <a href="https://example.com/guardianship">heraldtribune.com/guardianship</a>

Scott signs elder guardianship bill; but for some, it's too lateBy Barbara Peters Smith

Lori Smith embraces her mother, Bunny Garst, after a hearing March 1, at the Manatee County Judicial Center, where a judge authorized her...

Lori Smith embraces her mother, Bunny Garst, after a hearing March 1, at the Manatee County

Judicial Center, where a judge authorized her...

HeraldTribune.comMarch 10, 2016 2:25 PM

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The bill,

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Detert has said the law "will be the model for the other states," and was inspired by the anguish of family members who have told their stories in Tallahassee to press for systemwide reform. She called the bill her "absolute top priority" for this year's session, her last as she leaves the Legislature to run for the Sarasota County Commission. 
"I would be frankly devastated to leave the Senate without having finished that job," she said after Scott signed the bill. Detert had tried to get the measure through the Legislature last year, but it failed, in part because of Scott's concerns. This year, the governor was on board. "We couldn't have done it without him, because we tried doing it without him and it didn't work," Detert said. "The governor himself heard from lots of people in his travels, because Naples is one of the target areas for unscrupulous folks preying upon elderly wealthy old ladies. He heard it first hand. He was very supportive. I never doubted that he'd sign it. I'm thrilled that he did. He said he would come to our community and do a ceremonial signing, which will be great." For many of the families profiled in the Herald-Tribune's ongoing coverage of this topic, the new standards and scrutiny amount to a welcome change that will come too late for them personally. This month Bunny Garst of Bradenton saw her husband lose his last remaining right — to choose where he lives — after his family's costly legal struggle of more than three years with his professional guardian.
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Eliot Bernstein | Logout

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#### Eliot Bernstein Rank ()

A shuffle of deck chairs on the Titanic, yet none of the victims that caused legislative change due to abuse have had any relief & no perpetrators have been investigated by authorities. Now the victims this paper & PB Post exposed appear to be being retaliated against. While the Post stories exposed these victims horror stories & alleged wrongdoings by judges, attorneys & guardians, all of them continue with impunity now in committing crimes against new victims fearing no retribution for their actions. As far as the legislation goes, if they were not following the old laws that protected seniors and others, what makes you think they will follow the new ones? Seniors beware do not die or become disabled in Florida.

For more information on the rampant fraud in the Probate / Guardian / Family Court see http://tedbernsteinreport.blogspot.com where the Post is aware of a dead body of a one Mitch Huhem, Donald Trumps friend found in my father's house only days after moving in after it being sold in what appears a massively fraudulent transaction approved by Judge Colin and Judge Phillips. See http://www.gossipextra.com/2016/02/26/donald-trump-friend-motivational-speaker-mitch-huhem-found-dead-boca-raton-5709/ « less

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#### Eliot Bernstein Rank 0

@Eliot Bernstein A case with Proven Fraud on the Court by fiduciaries & counsel and replete with falsified and forged documents Post Mortem and attorneys closing a dead persons estate with their deceased husband acting as PR Post Mortem to change beneficiaries and more. Attorneys admitting on the stand to Mail Fraud, Fraudulently Creating a Trust and sending it to minor children's counsel to commit fraud and judges "doodling" during the hearing and retaliating against the victims while praising the attorney. Can't make it up.

Judge Phillips is so outraged that I have caught the attorneys and his "love" Martin Colin in a web of fraud to steal 100 Million from my family that he placed guardians on my children to silence our family and he held multiple hearings with minors unrepresented and blocking counsel from entering the case on their behalf, a form of child abuse.

So where are the Feds since Florida has abandoned the victims and left them with new predatory guardians and failed to protect them or their assets? « less

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#### NASGA Rank 0

Bunny Garst has every reason to be horrified at the judge's decision to move her husband from the comfort of his ranch to a facility. Everyone knows by now that a major move of this sort will only exasperate dementia and hasten Mr. Garst's demise.

Meanwhile, his wife is rendered helpless to protect him. Is this the intent of guardianship law? You can bet it's not.

Our continued appreciation to Senator Nancy Detert for her heartfelt work for reform.

Join the national movement for reform of... » more

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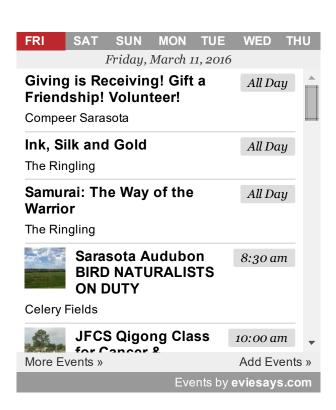
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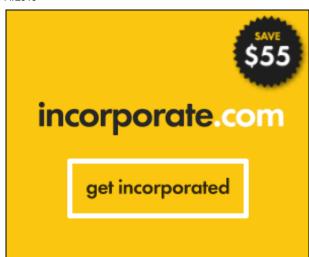
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