

Acta
Universitatis
Danubius

JURIDICA

The Role of Guardianship in Inheritance Law: Protecting Vulnerable Heirs

Gabriel Florinel Ion¹, Andy Corneliu Pușcă²

Abstract: The article examines in depth the crucial role of the guardianship institution in succession law, with a particular focus on the protection of vulnerable heirs such as minors and persons with disabilities. In the first part, the definitions and historical evolution of guardianship are presented, together with analyzes of typologies, such as legal, voluntary and temporary guardianship. Also, there are the legal procedures required for the appointment of a guardian, emphasizing the essential criteria and his responsibilities. The chapter on the rights and obligations of the guardian includes aspects of the administration of the inherited property and the welfare of the heir. A particular focus is given to safeguards for vulnerable heirs, as well as specific challenges such as abuse of power, conflicts of interest and risks of negligence. The article also includes jurisprudential analysis, illustrating practical problems and solutions in guardianship enforcement. In conclusion, recommendations are made to make existing legislation and practices adapt to the special needs of vulnerable heirs and the current complexes in inheritance law.

Keywords: guardianship; succession law; legal protection; inheritance administration

¹ PhD in progress, Assistant Professor, Doctoral School of Socio-Human Sciences, “Dunarea de Jos” University of Galati, Romania, Address: 111 Domneasca Str., 8000201, Galati, Romania, Corresponding author: gabrielgaby14598@gmail.com.

² PhD, Associate Professor, Danubius International University of Galati, Romania, Address: 3 Galati Blvd., 800654 Galati, Romania, E-mail: andypusca@univ-danubius.ro.



Copyright: © 2024 by the authors.
Open access publication under the terms and conditions of the
Creative Commons Attribution-NonCommercial (CC BY NC) license
(<https://creativecommons.org/licenses/by-nc/4.0/>)

1. Introduction

Guardianship is an essential legal institution in succession law, with the role of protecting the interests of vulnerable heirs, such as minors or persons with disabilities. If an heir does not have the legal capacity to manage his assets or make important decisions regarding his estate, the guardian is appointed to manage these matters on his behalf. Guardianship is not only about the efficient administration of inherited assets, but also about ensuring the welfare and protection of the heir, preventing potential abuse and neglect. In this context, the guardian plays a crucial role in maintaining a balance between protecting the interests of the heir and respecting his rights.

The institution of guardianship has deep roots in the history of law, being present since Antiquity, when it was used to protect heirs from possible abuses or patrimonial losses. Over time, guardianship legislation has adapted to social and cultural changes, becoming increasingly oriented towards the protection of the rights of vulnerable heirs. Its evolution reflected the transformations in the way society understands the needs of these heirs and implemented more rigorous mechanisms for supervising the guardian's activities, as well as solutions for possible abuses or conflicts of interest. Nowadays, guardianship is a pillar of succession law, being strictly regulated in most legal systems to ensure the proper protection of heirs.

This article explores, in detail, the role of guardianship in inheritance, the legal procedures for establishing a guardian, their responsibilities and the challenges encountered in applying this institution.

2. Types of Guardianship

In succession law, guardianship can take many forms, each tailored to the specific needs of vulnerable heirs and the particular circumstances of the estate. These forms of guardianship are regulated differently by state law, but the general principles remain similar in many jurisdictions. The main types of guardianship include legal guardianship, voluntary guardianship, and temporary guardianship (Friedman et al., 1996).

Legal guardianship is the most common form of protection for heirs who lack the capacity to manage their assets and interests. This is required by law and usually occurs automatically in the case of minors who are left without parents or legal guardians. A guardian appointed by law has the responsibility to administer the estate

inherited by the minor or disabled persons and to make decisions that are in their best interest.

Legal guardianship is usually established by a court decision, after a detailed assessment of the circumstances and needs of the heir. For minors, for example, the guardian may be a family member or a person appointed by the court. Legal guardianship can cover all aspects of the heir's life, from managing inherited assets to education and health (European Union Agency for Fundamental Rights, 2015).

Voluntary guardianship is an arrangement where a person capable of managing their own affairs and interests deliberately chooses to appoint a guardian to manage their estate should they become incapacitated in the future. This can be an important tool for protecting the elderly or those who anticipate health or decision-making problems.

By means of a legal act, the person in question expresses his will and designates a trusted guardian, specifying exactly what duties he will have in the administration of the inherited assets. Voluntary guardianship is often used to avoid unforeseen situations and to ensure the continuity of the administration of the estate efficiently and in the interest of the beneficiary.

Temporary guardianship is a form of protection imposed by the courts for a limited period, in situations where the vulnerable heir requires supervision and temporary administration of the assets until a legal situation is clarified. This form of guardianship is usually applied in cases where a permanent decision is expected or when the heir is temporarily unable to manage his assets due to illness, temporary absence or other similar circumstances.

Temporary guardianship can be appointed for short periods and ends as soon as the heir is able to regain control of the assets or when a permanent guardianship is established. In this type of guardianship, the guardian must act quickly and efficiently to protect the heir's assets until the situation is resolved.

Each type of guardianship plays an essential role in protecting vulnerable heirs by providing them with a secure legal framework for managing their estate and ensuring their well-being. From legal guardianship, which intervenes in the case of minors, to voluntary and temporary guardianship, the legal system offers flexible and adaptable solutions to meet the diverse needs of heirs. It is essential that guardianship procedures are clearly regulated and monitored to prevent abuses and ensure proper administration of inherited assets.

3. Legal Procedures for Establishing Guardianship

Establishing guardianship in succession law involves a series of strict legal procedures designed to protect the interests of vulnerable heirs and to ensure that the person appointed as guardian is suitable to fulfill this responsibility. This chapter examines the legal requirements and criteria for appointing a guardian, the related legal process, and the role of the courts and competent authorities.

In order to appoint a guardian in the context of inheritance, there are certain requirements and criteria that must be met so that the appointed person is able to protect the interests of the vulnerable heir. The guardian must be a person with full legal capacity, i.e. not under a form of prohibition or legal incapacity. In many jurisdictions, the courts check the moral and behavioral background of the person proposed as guardian, ensuring that he or she has not been involved in illegal activities or conduct that could endanger the interest of the heir (Gavisk & Greene, 2007).

A guardian must be able to manage inherited assets and make effective administrative decisions. This may include financial and organizational skills needed to manage the heir's estate. In many cases, courts prefer to appoint guardians who have a close personal connection to the decedent, such as family members, trusted friends or other known persons.

Appointing a guardian involves a formal judicial process, overseen by the competent courts, to ensure that all legal criteria are met. In general, the process of appointing a guardian begins with the filing of a formal application with the competent court. The request can be initiated by relatives, close friends or other persons who have an interest in the protection of the vulnerable heir.

Courts may require an assessment of the heir to determine the degree of vulnerability, including through medical, psychological or social reports, especially if the heir's ability to manage his own assets is disputed. The courts organize hearings, where the application is evaluated and the competences of the persons proposed as guardians are examined. During the hearings, the courts may request witnesses or experts to assess the situation of the heir and the guardianship candidate (Nwakasi & Roberts, 2021).

After completing the necessary hearings and evaluations, the court decides on the appointment of the guardian. In his decision, the judge will take into account all the evidence presented, the applicable legal criteria and the best interest of the heir.

Courts play a central role in the process of appointing and supervising a guardian, ensuring that vulnerable heirs are properly protected. After the appointment of the guardian, the courts or other competent authorities continue to monitor his activity to prevent abuse or neglect.

Legal procedures for establishing guardianship are essential to ensure the proper protection of vulnerable heirs. From the rigorous criteria for appointing a guardian to the detailed judicial process and the oversight role of the courts, these procedures provide a clear legal framework that protects the interests of heirs. Ensuring that all these mechanisms work effectively is essential to avoid abuse and to ensure that vulnerable heirs receive the care and support they need (Toader & Safta, 2013).

4. Guardian's Rights and Responsibilities

Guardianship is a complex legal responsibility and entails a number of rights and obligations that the guardian must comply with in order to protect the interests of vulnerable heirs. This chapter will analyze the main legal responsibilities of the guardian, his rights in the management of the heirs' patrimony and the control mechanisms designed to ensure that the guardian's activity is fair and transparent.

One of the most important responsibilities of the guardian is the administration of the estate inherited by the vulnerable heir. The guardian must take steps to protect the inherited assets from damage or loss, ensure their proper maintenance and make decisions that maintain or increase the value of the estate.

If the heir has considerable financial resources, the guardian may have the responsibility to make appropriate investments to protect these funds and increase their value. At the same time, any expenses made from the heir's patrimony must be made in his interest, such as expenses for education, health or care. The guardian must ensure that all taxes and duties related to inherited assets are paid on time and in accordance with applicable laws.

In addition to managing the estate, the guardian also has the responsibility of ensuring the general welfare of the vulnerable heir. The guardian is responsible for ensuring access to quality education for the decedent, whether it is enrolling in school, participating in extracurricular activities, or preparing for the decedent's future responsibilities.

If the heir is a minor or has a disability, the guardian must ensure that the heir receives adequate medical care, including regular visits to the doctor, necessary

medical treatments and maintaining a healthy lifestyle. Also, the guardian has the duty to ensure a stable and safe environment for the heir, promoting his emotional and psychological development. In cases where the heir suffers from trauma or psychological disorders, the guardian must ensure that he receives the necessary support (Lively, 2023).

To prevent abuses of power and negligence, the guardian's activities are subject to judicial supervision and periodic reporting to the guardianship courts. The guardian is required to submit detailed reports to the court or designated authorities on how the heir's assets were administered, what decisions were made and how financial resources were used.

In certain cases, the court may impose strict supervision over the guardian's activities, requiring approvals for major actions, such as selling assets or making significant investments. This monitoring is to ensure that all decisions are made in the best interest of the heir. Courts or other authorities may organize periodic evaluations of the guardian's activities to ensure that he is performing his duties fairly and responsibly. If irregularities are found, the guardian may be sanctioned or dismissed from office.

The guardian has a dual responsibility: to protect the estate of the vulnerable heir and to ensure his general welfare. Managing the inherited assets, making decisions in the best interests of the heir and complying with legal obligations are essential to the success of this role. Through periodic reports and judicial oversight, a control mechanism is created to prevent abuses and ensure that the rights of the vulnerable heir are properly protected.

5. Protection of Vulnerable Heirs

The protection of vulnerable heirs is central to probate law, ensuring that those unable to fend for themselves have access to assets, education and adequate care. This is a fundamental principle that ensures that the most vulnerable people in society are given the support they need to navigate the complexities of the legal system. This chapter analyzes in detail the categories of vulnerable heirs, such as minors, persons with disabilities and other groups at risk, as well as the legal and social measures implemented to protect their rights and interests, emphasizing the importance of an effective legislative framework and practice.

Minor heirs represent one of the most vulnerable categories within the guardianship system. In many jurisdictions, minors are considered legally incapable of making decisions about their assets, making it necessary to appoint a guardian to act in their best interests. This designation is not just a formality, but a deep responsibility, as the guardian has the duty to manage and protect the assets inherited by the minors. This includes ensuring fair and transparent management of resources, preventing abuse and neglect. In addition, the guardian must be able to make decisions that protect not only material assets, but also the interests and general well-being of the minor (Mag, 2015).

Another essential aspect of the protection of minor heirs is ensuring access to a quality education. The guardian must ensure that the minor receives adequate educational opportunities that will develop the skills and knowledge necessary for the future. A quality education is not only a right but also a vital tool to give these children a chance to build a better future. In addition, the guardian must provide a stable and supportive environment, promoting the minor's emotional development and addressing potential mental health issues. This may involve not only support in school activities, but also access to counseling services and therapies, so that the minor feels safe and supported in his personal development.

People with disabilities constitute another category of vulnerable heirs who require additional protection in terms of their rights and interests. The guardian must be aware of the specific needs of disabled heirs and adapt the support provided to those needs. This may include access to medical treatments, therapies, specialized education and resources to facilitate social integration. People with disabilities have the right to legal protection and a dignified life, and the guardian must ensure that these rights are respected. This includes providing them with access to information and resources that enable them to actively participate in making decisions about their lives. The guardian must consider not only the immediate needs of the disabled heir, but also long-term planning to ensure an independent and fulfilling life.

In addition to minors and people with disabilities, there are other categories of vulnerable heirs that require special protection. Elderly people who do not have the capacity to manage their own assets may require guardianship similar to that of minors. They may have specific health and social care needs which need to be carefully managed by the carer. Also, people from disadvantaged socio-economic backgrounds may be exposed to additional risks, including abuse or neglect. The guardian must be aware of these risks and take steps to protect the interests of these heirs. In addition, children or people who have been through situations of abuse or

trauma may require specialized emotional and psychological support in addition to patrimonial protection.

Protecting vulnerable heirs is essential to ensure a safe and supportive environment that allows them to develop and fulfill their potential. By identifying the categories of vulnerable heirs and by implementing appropriate legal and social measures, the guardianship system can significantly contribute to the promotion of the rights and well-being of these persons. It is essential that the guardian is well informed and prepared to respond to the specific needs of the heir, thus ensuring effective protection and a favorable framework for his development. In conclusion, the protection of vulnerable heirs is not only a legal responsibility, but also a moral obligation of society to ensure that all its members, regardless of circumstances, have the right to a life of dignity, health and opportunity (Millar & Renzaglia, 2002).

6. Challenges and Controversies in the Practice of Guardianship

Guardianship practices, although designed to protect the interests of vulnerable heirs, often face challenges and controversies. These can range from abuses of power and negligence to conflicts of interest and transparency issues. This chapter will explore these issues, highlighting the importance of identifying and addressing them within the guardianship system.

One of the most serious risks associated with the practice of guardianship is the abuse of power. This can manifest itself in various forms. The guardian may make inappropriate financial decisions or neglect duties to protect the heir's estate. In some cases, the guardian may use the heir's assets for personal gain, which constitutes a flagrant abuse of power (Pogach & Wood, 2019).

Another type of abuse is neglect to ensure the physical and emotional well-being of the heir. This may include not providing access to education, medical services or necessary emotional support. The guardian may take advantage of the heir's emotional vulnerability, manipulating him for personal gain or control. It is essential that guardianship courts are vigilant in identifying these abuses and impose corrective measures when necessary.

Conflicts of interest can arise when the guardian has a personal or financial relationship with the decedent that affects his or her ability to make objective decisions. When the guardian is a family member, tensions and conflicting interests can arise. For example, a guardian who is also an heir may be tempted to prioritize

their own financial interests over the well-being of other vulnerable heirs (Groll, 2014).

If the guardian has financial ties to third parties (for example, businesses or investors), he or she may make decisions that benefit those third parties, jeopardizing the heir's assets and interests. There is a risk that the guardian may show favoritism in decision-making, favoring certain family members or friends over others. It is crucial that the courts impose clear rules on conflicts of interest and ensure transparency in the guardian's decisions.

To address these challenges and controversies, it is necessary to implement solutions and reforms in the guardianship system. Providing specialized training to the guardian about his legal, ethical and administrative responsibilities can help prevent abuse and neglect. This should include training in financial management, guardianship ethics and communication skills.

Increasing the frequency and detail of regular reports to courts and competent authorities can improve guardianship transparency and accountability. Courts should have the power to intervene promptly in cases of abuse or neglect. Working with non-governmental organizations and communities to support guardianship can help raise awareness and promote a culture of accountability and protection of the rights of vulnerable heirs. A regular review of guardianship legislation to ensure that it remains relevant and adapted to society's needs can help prevent abuses and improve the protection of vulnerable heirs.

Challenges and controversies in guardianship practice underscore the need for a robust and well-regulated protection system for vulnerable heirs. Abuses of power, conflicts of interest, and guardian negligence are critical issues that can significantly affect the welfare of heirs. By implementing effective solutions and legal reforms, a safer and fairer framework for the protection of these vulnerable people can be ensured, guaranteeing their rights and well-being in the face of challenges related to their guardianship.

7. Conclusion

Following the in-depth analysis of the role of guardianship in inheritance law and the challenges associated with protecting vulnerable heirs, it is clear that the guardianship system plays an essential role in ensuring their well-being. Guardianship is crucial for the protection of vulnerable heirs, including minors, the

disabled and other at-risk groups. A well-regulated guardianship system ensures that the interests of these individuals are protected and that they have access to the necessary resources for personal development.

However, the system faces significant challenges, such as abuse of power, guardian negligence, and conflicts of interest, which can undermine the effectiveness of guardianship and lead to significant harm to vulnerable heirs. It is essential that these issues are recognized and proactively addressed. The role of courts and competent authorities is fundamental in this regard, as judicial supervision and periodic reporting are necessary tools to ensure transparency and accountability of the guardian. Courts have a duty to intervene in cases of abuse and protect the rights of heirs.

In this context, a constant review of guardianship legislation and practices is required to meet the ever-changing needs of society. These reforms can help create a safer and fairer environment for vulnerable heirs. It is important to provide ongoing training and educational resources for guardians so that they are well prepared to meet their legal and ethical responsibilities.

Courts should also implement stricter and more frequent monitoring mechanisms, including periodic evaluations of the guardian's activities, to prevent abuse and neglect. Promoting transparency in the decisions made by guardians is essential, and encouraging the reporting of any suspicious or abusive behavior can significantly contribute to the protection of heirs. The involvement of non-governmental organizations and local communities in support of guardianship can help raise public awareness of the rights of vulnerable heirs and promote better practices in the field.

A periodic review of existing legislation is also necessary to ensure that it remains up-to-date and adapted to contemporary realities, including emerging issues and the specific needs of vulnerable heirs. In conclusion, guardianship plays a fundamental role in protecting vulnerable heirs, but it is essential to recognize and address the challenges facing this system. By implementing the proposed recommendations, the protection of the rights and well-being of heirs can be improved, thus ensuring a fairer and safer framework for all vulnerable people who depend on the guardianship system.

References

- European Union Agency for Fundamental Rights. (2015). *Guardianship systems for children deprived of parental care in the European Union*. Report No. 2015-013.
- Friedman, L. M., Grossman, J. L., & Guthrie, C. (1996, April). Guardians: A Research Note. *American Journal of Legal History*, 40(2), 146-166.
- Gavisk, M. & Greene, E. (2007). Guardianship determinations by judges, attorneys, and guardians. *Behavioral Sciences & the Law*, 25(3), 339-353.
- Groll, D. (2014, October). Four Models of Family Interests. *Pediatrics*, 134 (Supplement 2), S81-S86.
- Lively, C. L. P. (2023, December 23). Medical-Legal Partnerships and Prevention: Caring for Unrepresented Patients Through Early Identification and Intervention. *HEC Forum*, 36, 527-539.
- Mag, A. G. (2015). Promoting children's wellbeing: Policies, practices and current trends. *Procedia - Social and Behavioral Sciences*, 180, 1391-1397.
- Millar, D. S. & Renzaglia, A. (2002). Factors Affecting Guardianship Practices for Young Adults with Disabilities. *Exceptional Children*, 68(4), 465-484.
- Nwakasi, C. C. & Roberts, A. R. (2021). Older Adults under Guardianship: Challenges and Recommendations for Improving Practice. *Journal of Aging & Social Policy*, 34(3), 401-417.
- Pogach, D. & Wood, E. (2019, June). *When the guardian is an abuser*. Ugly Judge. Retrieved from <https://uglyjudge.com/support/guardianship-and-conservatorship/when-the-guardian-is-an-abuser/>.
- Toader, T. & Safta, M. (2013, October 9). *Best Interests of the Child Achieved Through Constitutional Case-Law*. SSRN.