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Latest Custody Battle: Who Gets Mom

As Population Ages, Lawyers See Rise in Adult-Guardianship Cases; Laws to Curb 'Parent Snatching'

By RACHEL EMMA SILVERMAN

MARK GLASSER AND Suzanne Mathews are in a bitter battle over the care of Lilian Glasser. But they're not divorcing spouses, fighting over a child. They are siblings, fighting over whether their 86-year-old mother, Lilian Glasser, needs a guardian, and if so, who should play that role. Mrs. Glasser has an estimated fortune of \$25 million, and the case has already generated some \$4 million in legal fees amid court battles in two states.

Some of the thorniest custody battles these days are over the care of elderly parents, spouses or grandparents. As longevity increases, a growing number of siblings and other family members are fighting over where elderly parents should live, who should be their primary caregiver, and who

should control their finances. The custody fights are shining a spotlight on adult guardianship, in which a person is named by a court to manage an incapacitated adult's finances or personal care. Amid a patchwork of different state laws on the subject, lawmakers are seeking to make such battles less complicated by making state laws more uniform.

There are no reliable national statistics on the number of guardianships—let alone disputes—but some attorneys who focus on elder law say that such feuds are on the rise. Bernard A. Krooks, a New York elder lawyer, says he has seen “a tremendous uptick” in caregiver disputes in his practice over the past five years.

Terry Hammond, an El Paso, Texas, guardianship attorney and executive director of the National Guardianship Association, based in State College, Penn., says that he typically handles about 100 guardianship cases a year. About 25% of those are



Societite Brooke Astor, shown in 2002, is now the subject of a heated battle over her care.

contested, up from about 10% a decade ago. He expects that percentage to rise as the population ages.

Just last month, New York society doyenne Brooke Astor, 104 years old, became the subject of one such battle when her grandson, Philip Marshall, sought to remove his father, Anthony Marshall, as

Mrs. Astor's caregiver. In court papers filed last month, Philip Marshall has accused his father of ignoring Mrs. Astor's health and personal needs and requested that a friend of Mrs. Astor's be appointed as a guardian. Anthony Marshall strenuously denies the allegations, according to Kenneth E. Warner, one of
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his lawyers.

Senior custody battles are being propelled by a number of demographic shifts. As the population ages and more people live longer, more seniors are likely to eventually lose their mental or physical capacity, leaving decisions over their finances and personal care to others. What's more, families have grown increasingly fractured, with divorce and second marriages leading to tension among children and step-families over the care of aging relatives.

Custody feuds, lawyers say, are often driven by longstanding family rifts, and the control of family assets often plays a role. "It's a will contest while the parents are still alive," says Mr. Krooks, the New York attorney.

At the same time, family members are more likely to live far from each other, making it tougher to monitor the condition and care of elderly relatives. Interstate custody battles are particularly complicated because guardianship laws vary markedly by state. Lawyers say there have even been "parent-snatching" cases in which children whisk their parents to states that may have more favorable laws.

In response, many states have recently revised their guardianship laws. Often, the new laws give courts authority to limit guardians' powers and provide more court oversight over guardians' activities. Last year, some 25 adult-guardianship bills were passed in 15 states, after 19 guardianship bills in 14 states passed in 2004, according to the American Bar Association Commission on Law and Aging. New Jersey recently overhauled its guardianship laws for the first time in more than 30 years, now providing, for instance, for judges to appoint "limited" guardians who would allow wards to con-

Preventing Conflict

Here are some steps seniors can take ahead of time to minimize the chances of guardianship proceedings or custody battles later.

- Create a financial power-of-attorney document, which authorizes a trustworthy agent—often a spouse, another family member, or an adviser—to make financial decisions if you become unable to make them.
- Safeguard your power-of-attorney document by requiring that your agent provide family members or a third party with regular accounting statements. You can also name co-agents or limit the agent's power to make gifts of your property.
- If using a "springing" power-of-attorney document, which goes into effect only when you are declared incapacitated, carefully specify how you are to be deemed incapacitated. You can require, for instance, that your agent get a second opinion.
- Create an advance directive for health care, which includes a health-care power-of-attorney document designating an agent for medical decisions and a living will, which details the medical treatment you want.
- Create a so-called living trust. You can transfer your assets into the trust and designate a trustee to manage trust property if you become incapacitated.
- Consider a clause in advance-planning documents requesting that future feuds be settled with a mediator, which can be less adversarial and expensive than litigation.
- Talk about your wishes with your agents or trustees, as well as other family members and heirs.
- For more information on advanced planning, see AARP at aarp.org, the American Bar Association Commission on Law and Aging at abanet.org/aging, or the National Academy of Elder Law Attorneys at naela.org.

Source: WSJ research

to be involved in decisions about their own lives.

Meanwhile, the Uniform Law Commissioners, a national group of state-appointed lawyers who draft model laws for states on a variety of issues, are working to create a model law specifically on interstate guardianship feuds. The model law won't be ready for states' consideration until next year.

In the Glasser feud, Ms. Mathews and Mr. Glasser had been disputing where Mrs. Glasser should live—in Alamo

Heights, Texas, under Ms. Mathews's watch, or in Highland Park, N.J., where Mrs. Glasser had lived for many years. In one episode in the long case, a New Jersey court last fall issued an order forbidding the removal of Mrs. Glasser outside the state. Hours later, Ms. Mathews chartered a private jet which carried her mother to Texas from a New York airport.

Ms. Mathews, in court filings, has said she was unaware of the court order. Now, the guardianship case is being heard in New Jersey, after a Texas judge agreed to

let a New Jersey court consider the matter. Ms. Mathews is seeking to become guardian over her mother's personal care. Mr. Glasser isn't seeking guardianship of his mother, but supports the petition of a family friend in New Jersey to be his mother's personal-care guardian.

Mrs. Glasser, for her part, says she just wants "my life and my house to be put together again" and to "get back to my way of life again."

For some advocates for the elderly, the lesson to be learned from such custody fights is that it's important to plan carefully for the future. Being under guardianship can be very restrictive—in some cases not only limiting the person's right to make financial or health-care decisions but also potentially keeping him or her from voting, marrying or entering contracts. In many cases, "you are reduced to the legal status of an infant," says Sally Hurme, a lawyer with AARP Financial Security, a unit of AARP in Washington.

Often, guardianship proceedings take place because no one has been designated ahead of time to handle an incapacitated adult's finances or health-care decisions, so a court must name someone to take on that responsibility. Guardianship proceedings can also happen if someone accuses a caregiver of neglect or financial impropriety and petitions the court to name a protective guardian.

If family members are feuding fiercely, a court might name a third party, such as a lawyer, a social worker or a specially trained professional guardian, to step in. Professional guardian fees must be approved by the court, but are generally about \$45 to \$100 an hour, which is typically paid out of the incapacitated person's estate, says Mr. Hammond.

Because guardianship can be so restrictive, elder-law attorneys say that petitioning a court for guardianship should be a last resort. The good news: There are a number of steps families can take ahead of time to avert conflicts or guardianship proceedings. For starters, advisers say adults in good health should create both a power-of-attorney document for finances and an advance directive for health care. Mr. Hammond says that the cost of creating simple advanced-planning documents typically ranges from a few hundred dollars to a couple thousand dollars.

A financial power-of-attorney document authorizes an agent—typically a spouse, another family member, or a trusted adviser—to make financial decisions if you become unable to make them yourself. It's important to designate someone trustworthy, since your agent has wide latitude over your finances. Because a power-of-attorney arrangement is a private contract between you and your agent, there is no court supervision. "Access to someone else's money is very tempting," says Ms. Hurme of AARP.

Currently, few people plan ahead. A 2003 AARP study of 1,500 adults age 45 and older found that only 27% had created a financial power-of-attorney document, while 39% had a durable power-of-attorney for health-care decisions.

One simple step to take while you're in good health is to sit down and talk with your agents or trustees, as well as other family members and heirs. To prevent bigger battles later, "the main thing that you can do is talk, talk, talk," says Erica Wood, assistant director for the American Bar Association Commission on Law and Aging.