

# Flaws in Japanese Guardianship

## Case 1

### Common questions given by the wards

- Why am I put under the guardianship program now?
- Who has commenced the guardianship for me on what grounds?
- Why has my residence been sold?
- How much financial assets do I still own?

If the wards have the above questions, normally they are advised to request the family court to disclose the related documents stowed by the authorities. This request for access to official documents are based on the philosophy that the right to know what legal procedures are taken for individuals should be protected. However, family courts, guardians and organizations promoting guardianship barely introduce such option is available. In this paper, I would like to present status quo and issues on request for access to official documents by taking the ongoing example.

In downtown of Tokyo, there is an elderly lady in seventies running small snack bar on her own. As soon as this lady, who was born in Shikoku and then, living alone, started showing the slight symptom of dementia, her local administration office initiated the legal steps to put her under guardianship before she knew because single-aged persons are believed to be a source of possible troubles that local administrators have to take care. The family court appointed the judicial scrivener as her guardian who was totally unknown to her. This newly appointed guardian closed her snack bar and sold her apartment without her permissions. Her domestic cat, her beloved partner, was moved to somewhere and died in one week. She also had to move to the home for the elderly people in Asakusa where she has endured the unpleasant living environment to find herself sleeping on the cardboard-made bed for one year.

This is unacceptable! One of her snack bar customers felt pathetic and anger. He visited the judicial scrivener office in Ueno with her who is now on the wheelchair. The following is the conversation between them.

JS: I told you that I was going to sell your apartment.

Lady: I haven't been told. To whom did you sell?

JS: . . . . .

Lady: How much was my apartment sold for?

JS : . . . . .

Lady: What happened to my snack bar? I want to work there, but I can't do so because my shack bar has gone.

JS . . . . .

The guardian's failure to answer was not tolerable anymore, she thought in July 2019, then sent the mail to the family court by post, asking the request for access to three official documents;

- ① the paper to commence her guardianship which should stipulate the whole process of why she had to be under guardianship,
- ② the report on findings after interviewing the lady that the family court usually conduct before guardianship judgement, and
- ③ documents concerning permission at the time of selling her residential real estate that should explains the process of how and why her real property was sold. The family court however refused to disclose all documents.

In October 2019, this snack bar lady and her customer visited again the Adult Guardianship Center Legal Support of Tokyo Family court by taxi. They explained the conversation with her guardian to the clerk court who is responsible for her case, then once again applied for the request for access to the documents that she wanted to examine. Next day, she got a phone call from family court to learn that her request was not fulfilled.

Why does family court refuse to present the necessary documents ?

In this case, the following reasons are conceivable.

Reason1 : local administrators commenced guardianship although she was not in the condition of needing guardianship.

Reason 2 : The family court failed to conduct interview her, which should have done before commencement of guardianship.

Reason 3: The appointed guardian sold her residential real estate without telling her, besides property liquidation was not needed.

Seemingly people on the legal sides, such as local municipality, family court and judicial scrivener as guardian, didn't want to make their mistakes open to public. They depended on the Article 47-4 of Family Affairs Procedural Law which stipulate that documentations do not have to be disclosed if such disclosure puts

somebody in trouble. Their conduct is irresponsible. This not having long to live lady now says she wants to file lawsuit against the family court which infringes her right to know her circumstances by covering up their faults. Her desire toward legal proceedings is quite understandable.

Here, however, Article 31 of Civil Procedural Law comes up as obstacle, which says if the ward wants to take a legal action, the guardian should do on behalf of the ward. It is quite clear that occupational guardian is highly unlikely to file a lawsuit against the family court. Indeed, the family court is the authority that gave him a position as guardian to make money. In this context, this occupational guardian would not fight against the legal authority. On top of it, as her guardian is judicial scrivener, not lawyer, lawyer should be hired in the first place. Once you are put under the guardianship, you are not able to even take legal actions. This is the reality of Japanese adult guardianship.



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The woman on the wheelchair with her supporter.

She was rejected the Disclosure request by the family court.

Now let's assume some situation in which the ward sues the guardian. According to the Article 31 of Civil Procedural Law, the ward is considered as the plaintiff and the guardian as representative of the plaintiff as well as the defendant. In other words, the plaintiff sues the representative of the plaintiff, which blocks the commencement of trial itself. This situation clearly unveils the contradiction of the Article 31 of Civil Procedural Law, which was based on the belief that guardian nature is fundamentally good. There are quite a few guardians of this sort who underestimate the ward's capability, believing they would not be sued.

Quickly amending at least above mentioned two laws; Article 47 of Family Affairs blocking inspection of documents as well as 31<sup>st</sup> of Civil Procedural Law barring the lawsuit by the ward, could remarkably improve the operation of Japanese Guardianship.