

California Conservatorships

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This brief synopsis is to provide a basic understanding of California Conservatorship law. It is not an exhaustive treatment of the subject. For more detailed information, obtain the counsel and assistance of an attorney by calling for an appointment.

A Conservatorship is a proceeding through which the court authorizes one person to make decisions for another person. Generally, no person has any authority to make decisions for another adult person; not even spouses have such authority over each other. Accordingly, if an adult loses capacity to make decisions, then a Conservatorship likely is the only mechanism through which a loved one, or other concerned person, may gain authority to make decisions to provide for his or her care.¹

Parties to a Conservatorship

There are two primary parties to a Conservatorship: The Conservatee and the Conservator. The Conservatee is the person whom lacks capacity to make decisions. The Conservator is the person whom the court authorizes to make decisions for the Conservatee.

¹ If the person lacking capacity has an Estate Plan in place including a Trust and/or Durable Powers of Attorney, then a Conservatorship may not be necessary, as discussed in more detail below.

Purpose of Conservatorship

The purpose of a Conservatorship is to confer on one person the authority to make decisions for another person whom lacks capacity to make decisions. The Conservatorship shifts the authority and responsibility for making financial and personal care decisions from the Conservatee to the Conservator. Consequently, the Conservatorship limits or removes the Conservatee's authority to make decisions for himself or herself.

Types of Conservatorships Based on Degree of Limitations of Conservatee

There are three general types of Conservatorship:

1. Probate Conservatorship;
2. Limited Conservatorship; and
3. Conservatorship provided by the Lanterman-Petris-Short Act (an "LPS Conservatorship").

Probate Conservatorships are the most common Conservatorships. A Probate Conservatorship can be established for an adult whom lacks mental or physical capacity. Such lack of capacity may be caused by dementia (including Alzheimer's dementia), disease, and/or physical disability. Such lack of capacity may exist if someone is being exploited financially or is not capable of paying bills, arranging for proper health care, maintaining healthy living conditions, and/or arranging for proper nourishment. A Probate Conservatorship enables the Conservator to protect and preserve the Conservatee's assets and income and to arrange for appropriate personal care for him or her.

Limited Conservatorships provide assistance to developmentally disabled adults whom lack capacity to perform some, but not all, necessary tasks. A developmentally disabled adult is an adult with a disability that originated before age 18 years, is expected to continue indefinitely, and constitutes a substantial handicap. A Limited Conservatorship provides the Conservator limited authority to make for the Conservatee only those decisions that the Conservatee is unable to make. Through a Limited Conservatorship the

Conservatee maintains authority to make decisions to the extent that he or she is able to do so.

LPS Conservatorships are for gravely disabled adults. A gravely disabled adult is one whom is unable to provide for his or her basic needs for food, clothing, or shelter because of a mental disorder or impairment or chronic alcoholism. Generally, an LPS Conservatee poses a danger to himself or herself or others or refuses to accept assistance.

Types of Conservatorships Based on Nature of Limitations of Conservatee:

Conservatorships of the Person and Conservatorships of the Estate

There are two types of Conservatorship based on the nature of the Conservatee's limitations:

1. Conservatorship of the Person; and
2. Conservatorship of the Estate.

If the Conservatee is unable to provide properly for his or her personal needs for physical health, food, clothing, or shelter, then the court can establish a Conservatorship of the Person of the Conservatee. Through a Conservatorship of the Person, the court confers on the Conservator authority and responsibility to make health care and personal care decisions for the Conservatee.

If the Conservatee is substantially unable to manage his or her own financial resources or to resist fraud or undue influence, then the court can establish a Conservatorship of the Estate of the Conservatee. Through a Conservatorship of the Estate, the court confers on the Conservator authority and responsibility to make financial and assets management decisions for the Conservatee.

Temporary Conservatorships for Emergencies

If an emergency exists, then the court can establish a Temporary Conservatorship. Because of various procedural requirements, establishing a Conservatorship generally requires approximately one to two months. If waiting for such one to two months would

be detrimental to the Conservatee, then the court can establish a Temporary Conservatorship virtually immediately. Through a Temporary Conservatorship, the Conservator can provide temporary care, maintenance, and support to the Conservatee and/or protect the Conservatee's property from loss or injury.

Duration and Termination of Conservatorship

After the court establishes a Probate Conservatorship or a Limited Conservatorship, the Conservatorship will continue until either the Conservatee gains capacity or dies. In contrast, LPS Conservatorships automatically terminate after one year unless renewed.

Attorney Generally Required for Conservator

In most cases, the Conservator is required to be represented by an attorney. Specifically, most Conservators are required to post a bond, and most bond companies require bonded Conservators to be represented by an attorney. Even if not required, however, the Conservator should obtain the counsel and assistance of an attorney for guidance through the Conservatorship proceedings. Please call for an appointment.

Avoiding Conservatorship with Trust and Durable Powers of Attorney

Adults with capacity to make decisions may avoid the necessity of a future Conservatorship by creating an Estate Plan that includes a Trust and/or durable Powers of Attorney. Through such documents one person authorizes another person to make decisions for him or her after loss of capacity. Further, through such documents a person may provide specific decision-making directions to those designated people. Because of the complexities of Trusts and durable Powers of Attorney, one should obtain the counsel and assistance of an attorney to draft such Estate Plan documents. Please call for an appointment.

Attorney Assistance Recommended

Because Conservatorships, Trusts, and durable Powers of Attorney are complicated and potential harm can result if not handled properly, one should obtain the counsel and assistance of an attorney before initiating a Conservatorship, creating an Estate Plan including a Trust and/or durable Powers of Attorney, or taking any action on behalf of a person lacking capacity. Please call for a consultation.

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