

# CONSERVATORSHIP



## CONSERVATORSHIP



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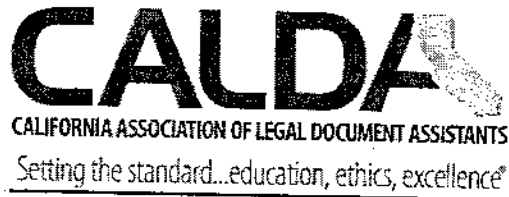
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*A conservatorship is a court case where a judge appoints a responsible person or organization (called the "conservator") to care for another adult (called the "conservatee") who cannot care for himself or herself or manage his or her own finances.*

*The information in this brochure is derived from: 2012 Judicial Council of California/Administrative Office of the Courts <http://www.courts.ca.gov/selfhelp-conservatorship.htm>, and is used with the permission of the AOC.*

### **Types of Conservatorships**

There are various types of conservatorships depending on the needs of the conservatee:

#### **Probate Conservatorships**

These conservatorships are based on the laws in the California Probate Code. They are the most common type of conservatorship. Probate conservatorships can be:

- **General Conservatorships** — conservatorships of adults who cannot take care of themselves or their finances. These conservatees are often elderly people but can also be younger people who have been seriously impaired, as in a car accident, for example.
- **Limited Conservatorships** — conservatorships of adults with developmental disabilities who cannot fully care for themselves or their finances. Conservatees in limited conservatorships do not require the higher level of care or help that conservatees in general conservatorships need.

When a conservatorship is urgently needed the court may appoint a temporary conservator until a general conservator can be appointed. The request must be filed as part of a general conservatorship case and can be filed either at the same time or soon after the general conservatorship case is opened with the court. The main duties of a temporary conservator are arranging for the temporary care, protection and support of the conservatee and protecting the conservatee's finances and property.

## **Lanterman-Petris-Short (LPS) Conservatorships**

LPS conservatorships are used to care for adults with serious mental health illnesses who require special care such as very restrictive living arrangements (living in locked facilities) or extensive mental health treatment (like very powerful drugs to control behavior). Conservatees in LPS conservatorships cannot or will not agree to the special living arrangements or treatment on their own. LPS conservatorships must be started by a local government agency. If you believe that this is the type of help the adult needs, contact your local county Public Guardian or Public Conservator. The information in this brochure does not apply to LPS conservatorships.

## **Types of Probate Conservators**

The probate court can appoint a conservator of the person, a conservator of the estate or both, depending on the needs of the conservatee.

- A conservator of the **person** cares for and protects a person when the judge decides that the person cannot do it. The conservator is responsible for making sure that the conservatee has proper food, clothing, shelter and healthcare. Depending on the conservatee's ability to understand and make decisions, it may be necessary for the conservator to make important medical choices for him or her.
- A conservator of the **estate** handles the conservatee's financial matters, such as paying bills and collecting a person's income if the judge decides the conservatee cannot do it.

Being appointed conservator of the person does **NOT** automatically make that person the conservator of the estate. If someone wants to be conservator of both the person and the estate he or she must petition to be appointed as both. If someone is a conservator of the person and later decides that it is necessary that he or she be appointed conservator of the estate, he or she can file a new petition for conservatorship and, this time, request to be appointed as conservator of the estate.

## **Duties of a Conservator**

The duties of a conservator of the **person** are to:

- Arrange for the conservatee's care and protection
- Decide where the conservatee will live
- Make arrangements for the conservatee's
  - Meals
  - Healthcare
  - Clothing
  - Personal care
  - Housekeeping

- Transportation
- Shelter
- Recreation
- Well-being
- Get approval from the court for certain decisions about the conservatee's healthcare or living arrangements
- Report to the court on the conservatee's current status

The duties of a conservator of the **estate** are to:

- Manage the conservatee's finances
- Locate and take control of all assets
- Collect the conservatee's income
- Make a budget to show what the conservatee can afford
- Pay the conservatee's bills
- Responsibly invest the conservatee's money
- Protect the conservatee's assets
- Account to the court and to the conservatee for the management of the conservatee's assets

### **Who Can File for Conservatorship**

There are a number of people who can file for a conservatorship:

- The spouse or domestic partner of the proposed conservatee
- A relative of the proposed conservatee
- Any interested state or local entity or agency
- Any other interested person or friend of the proposed conservatee
- The proposed conservatee, himself or herself

In appointing a conservator the court is guided by the best interests of the conservatee. If the proposed conservatee has nominated someone (and the proposed conservatee has the mental and physical ability to express his or her preference) the court will appoint that person as conservator unless it is **NOT** in the proposed conservatee's best interests.

If the proposed conservatee has not or cannot nominate anyone the law provides a list of preferences that the court generally follows when the court determines whether all these persons are qualified to serve as a conservator.

The order of preference is:

1. Spouse or domestic partner
2. Adult child
3. Parent
4. Sibling
5. Any other person the law says is okay
6. Public Guardian

If the person closest to the top of the list does not want to be conservator he or she can nominate someone else.

In the end, regardless of this order of preference, the selection of the conservator is up to the judge and the judge makes this decision by considering the best interests of the proposed conservatee.

If you know someone who needs help and probably needs a conservator but there is no suitable family friend or relative that can be the conservator, do some research to find a private professional fiduciary to act as conservator. Professional fiduciaries charge fees but the court must approve, in advance, all fees paid by the person to be helped. If the person who needs help cannot pay these fees contact your county's Public Guardian or Public Conservator by searching online for "public guardian" and your county's name or looking in the government pages of your telephone book. There may be fees charged but they are usually less than the fees requested by a professional fiduciary. They have experienced personal conservators and property administrators who can serve as conservator. If you are not eligible to use the public guardian's services, contact your county's Department of Aging.

You can also call the:

- Adult Protective Services hotline : 1-800-414-2002, or
- Senior Legal Hotline : 1-800-222-1753

### **Alternatives to a Conservatorship**

You must be sure that establishing a conservatorship is the only way to meet the person's needs. If there is another way, an alternative to the conservatorship, the court may not grant your petition.

You may not need a conservatorship if the person who needs help:

1. Can cooperate with a plan to meet his or her basic needs.
2. Has the capacity and willingness to sign a power of attorney naming someone to help with his or her finances or healthcare decisions.

3. Has only social security or welfare income every month and the Social Security Administration can appoint you Representative Payee. The Representative Payee is the person the beneficiary allows to receive social security checks in his or her name on behalf of the beneficiary.
4. Is married or is in a domestic partnership and the spouse or partner can handle financial transactions. The property must be community property or in joint accounts.

For medical and personal care decisions:

- o Advance healthcare directive
- o Court authorization for medical treatment
- o Informal personal care arrangements
- o Restraining orders to protect against harassment

For financial decisions:

- o Power of attorney
- o A substitute payee for public benefits (veterans' benefits or social security benefits)
- o Informal arrangements
- o Joint title on bank accounts or other property
- o Living trusts (also called "inter vivos" trusts)

### **The Conservatorship Court Process**

Setting up a conservatorship is a long and complex process. Before asking the court to appoint a conservator the person asking for the conservatorship should be sure this is an appropriate arrangement for the proposed conservatee.

- **Starting the conservatorship** - The process may be started by the proposed conservator; the proposed conservatee; the spouse, domestic partner, a relative or a friend of the proposed conservatee; another interested person; an interested state or local agency, employee of the agency, or public officer. The process starts once all the necessary paperwork is filed with the court.
- **Completing the Petition** - The Petition must include information about the proposed conservator and conservatee, relatives and the petitioner (the person filing the case in court) and the reasons why a conservatorship is necessary. It must also explain why the possible alternatives to a conservatorship are not available in this case.
- **Filing of the Petition** - The petitioner files the Petition with the court clerk. He or she must pay the filing fee plus a court investigator fee. A court date will be scheduled by the clerk. If the petitioner is low income, he or she may be able to ask the court for a fee waiver.
- **Informing the proposed conservatee**. The petitioner must have someone else personally deliver a citation and a copy of the Petition to the proposed conservatee.

- **Informing the proposed conservatee's relatives.** The petitioner must have someone else mail a written notice stating the court hearing on the conservatorship Petition together with a copy of the Petition to the conservatee's spouse or domestic partner and close relatives.
- **Investigation by a court investigator** - A court investigator will talk to the proposed conservatee and others who may be familiar with the conservatee's condition. The court will assess the conservatee's estate for the cost of this investigation unless the court decides that the assessment would be a hardship for the conservatee.
- **Hearing** - The proposed conservatee must go to the hearing unless he or she is excused because of illness. At the hearing a judge will determine if everyone has been properly notified and if a lawyer should to be appointed to represent the proposed conservatee. Once the judge is ready to make a decision he or she may grant or deny the conservatorship. If the judge grants the petition an order appointing the conservator will be filed and Letters of Conservatorship will be issued. If there is an estate, a surety bond must be filed unless the court orders the conservatee's bank accounts be frozen.

### **If a Judge Grants the Conservatorship**

The conservator must purchase a copy of the Handbook for Conservators from the court or download it at the link provided. He or she can then assume the powers authorized under the law. Also, the conservator of the person, conservator of the estate and limited conservator of the estate must attend the training for conservators offered by the court. Each conservator will have the ongoing duty to report to the court for regular reviews and to meet with the court investigator.

### **The Role of the Court Investigator**

The court investigator gives neutral information about the case to the judge. He or she will call the proposed conservator and set up a visit with him or her and the proposed conservatee. Sometimes, the investigator will meet with both more than once. The investigator must also interview relatives of the proposed conservatee.

The court wants the investigator to:

1. Have a private interview with the proposed conservatee.
2. Explain how the conservatorship will change his or her life.
3. Explain what will happen at the hearing.
4. Explain about the proposed conservatee's right to object to or oppose the conservatorship, to have a lawyer, to have a different conservator and to have a trial by jury if he or she wants a jury to decide if a conservator is needed.

5. If the proposed conservatee does not have the ability to understand or to give an opinion, the investigator will decide if a lawyer should be appointed to represent him or her.
6. Review the petitioner's *Confidential Supplemental Information (Form GC-312)* and get more information if needed.
7. Find out if the proposed conservatee is willing and able to come to the hearing. The investigator is allowed to look at the proposed conservatee's confidential medical records.
8. See if the proposed conservatee is able to fill out an affidavit of voter registration.
9. Talk to the relatives about the proposed conservatorship and why it is necessary (or not).
10. Write a confidential report for the court and send a copy to the conservator, the conservator's lawyer, the proposed conservatee and his or her lawyer, the conservatee's spouse or domestic partner and the conservatee's parents and children.
11. Make recommendations to the judge about the case.

Once a conservator is appointed the court investigator stays involved. Six months after the appointment the investigator will review the case to make sure the conservator is fulfilling his or her responsibilities as conservator and that the conservatee's rights are being upheld. The investigator will review the case again in another six months and at the end of each 12-month period after that.

If the investigator thinks the conservator is acting in the best interests of the conservatee and the court agrees, the court can reduce the scope of the reports the investigator must write and file in later reviews but the investigator must make a personal visit and interview the conservatee and must prepare and file at least a short status report every year after the first year. The court may order additional reviews as necessary or helpful to protect the conservatee.

If the investigator thinks there may be a problem after one of these reviews he or she may ask the judge to appoint a lawyer for the conservatee. This may start the legal process to sanction or remove the conservator and either appoint someone else as successor conservator or end the conservatorship.

The investigator will also visit the conservatee and make a report if:

1. A petition for appointment of a temporary conservator is filed.
2. The temporary conservator wants to move the proposed conservatee out of his or her residence.
3. The conservator asks for exclusive authority to make medical decisions for the conservatee especially if he or she is asking for special powers to take care of the needs of a conservatee with dementia.
4. The conservator wants to sell the conservatee's home (or former home).



5. A petition for appointment of a successor conservator is filed and the conservatee cannot attend the hearing or refuses to attend the hearing on the petition.

The court investigator will explain these situations to the conservatee. He or she will then make recommendations to the court in a written report that will also be mailed to the conservator, the conservatee's attorney and his or her spouse or domestic partner and other close relatives.

### Temporary Conservatorships

A judge may appoint a temporary conservator to take care of a conservatee's more immediate needs that cannot wait until a general conservator is appointed. A temporary conservator may also be appointed by the court to fill in temporarily, in between permanent conservatorships for example, if one conservator is removed and a new one has not yet been appointed.

Temporary conservatorships have a specific end date. A temporary conservator is usually appointed for a fixed time period, usually 30 to 60 days. These conservatorships can be of the person, of the estate or both. The main role of the temporary conservator is to ensure the temporary care, protection and support of the conservatee. Also, the temporary conservator of the estate protects the conservatee's finances and property from any loss or damage until a general conservator can take over the management of the estate.

A temporary conservator cannot, without the judge's prior approval:

- Move the conservatee from his or her home (unless it is an emergency)
- Sell the conservatee's home, or, if the conservatee is a renter, give up the lease
- Sell or give away an estate asset.

To ask for the appointment of a temporary conservator the request must be made as part of a general conservatorship court case.

### Ending a Conservatorship

A conservatorship is usually a permanent arrangement but, in certain cases, a conservatorship may be ended or the conservator may be changed.

- **The conservatee becomes able to handle his or her own affairs**  
Someone may have a conservatorship while he or she recovers from a physical or mental condition that is temporarily disabling. For example, the conservatee may have been in a serious car accident and be unable to handle his or her personal affairs or finances. After

rehabilitation, the conservatee may recover and be able to take care of things again. In these cases the conservatee, the conservator, a relative or friend of the conservatee or some other interested person can ask the court to end the conservatorship. The court may ask the court investigator to evaluate the case and the conservatee's condition to see if the conservatorship should be ended. If the judge ends the conservatorship the conservator will be released from his or her duties.

- **The conservatee doesn't have any more assets**

Sometimes all of the conservatee's assets will be spent for his or her care. Without assets there may no longer be a need for a conservatorship of the estate. The conservatorship of the person continues, if necessary.

- **The conservatee dies**

The conservatorship ends when the conservatee dies, however the court will not automatically release the conservator from his or her duties and close the conservatorship until the conservator takes certain actions to finish the case.

- **The court removes the conservator**

The court may remove a conservator who is not doing the job or is not able to do it, at which time a new conservator will be appointed. The conservatee or any of his or her relatives or friends may ask the court to remove and replace the conservator. If the conservatee makes the request and does not have his or her own lawyer the judge will generally appoint one to file the Petition for the conservatee.

- **The conservator resigns**

If the conservator becomes ill or cannot continue serving as a conservator for some other reason the conservator can file a petition asking the court to accept his or her resignation. Until (and unless) the court accepts the resignation the conservator is still fully responsible as conservator. If the court accepts the resignation the judge may ask the former conservator to help find someone else to replace him or her. If there is no one suitable the public guardian or a professional fiduciary may be appointed.

When a conservator is removed or resigns or the conservatorship ends, the conservator will be released from his or her duties but only after he or she wraps things up and provides the court the needed information or documents to either transfer the case to a new conservator or end the conservatorship. For conservatorships of the estate the conservator will have to turn in a final accounting.

### **Regional Centers**

In California, people with developmental disabilities have a right to services necessary to live independent, productive, normal lives. The state must provide services for each person with a developmental disability at each stage of his or her life, regardless of age or the degree of the disability. These state services are provided through the regional centers which are nonprofit corporations that have contracts with the California Department of Developmental Services to

serve people with developmental disabilities.

The services provided through regional centers are available to persons with developmental disabilities whether they are under a general conservatorship, a limited conservatorship or no conservatorship at all.

Find a directory of regional centers in California .

Get more information on regional centers at the [California Department of Developmental Services](#).

### **Limited Conservatorship**

A limited conservatorship is a court case where a judge gives a responsible person (called a "limited conservator") certain rights to care for another adult who has a developmental disability (called a "limited conservatee").

Limited conservatorships are for adults with developmental disabilities. Developmental disability refers to a severe and chronic disability due to a mental or physical impairment that started before age 18. Limited conservatorships are set up to assist developmentally disabled adults who are unable to provide for all their personal or financial needs.

As with general conservatorships, there are two kinds of limited conservatorships:

1. A limited conservatorship of the **person** is a court arrangement where a conservator cares for and protects a developmentally disabled adult and provides for the conservatee's needs associated with daily life.
2. A limited conservatorship of the **estate** is a court arrangement where a conservator handles the conservatee's financial matters, such as paying bills and collecting the conservatee's income if the conservatee has an estate.

You do not need a conservatorship of the estate if:

- The developmentally disabled adult you care for gets public assistance, such as Supplemental Security Income (SSI) or Social Security (SSA) but has no other assets
- The developmentally disabled adult earns a wage

However, you do need a conservatorship of the estate if the developmentally disabled adult has other assets, such as an inheritance or a settlement from a lawsuit that is not in a Special Needs Trust.

If a developmentally disabled minor will soon be 18 it is often a good idea to start the process of requesting a limited conservatorship a few months before the developmentally disabled person's

18th birthday. Keep in mind, however, that a limited conservatorship can be established at any time after the person with the developmental disability has reached age 18.

The Superior Court Probate Department will supervise the limited conservator. Someone from the court investigator's office will review the case one year after the conservatorship is granted then every two years after that. The investigator will call the conservator to update the court's file and will also visit the conservatee.

### **Limited Conservator's Duties**

When someone is appointed as a limited conservator of a person who is developmentally disabled the court can give the conservator limited responsibility for the person and their estate. The limited conservator's Letters of Conservatorship and the court's Order of Appointment lists the exact areas (powers) in which the limited conservator is authorized to act. The limited conservatee keeps all other legal and civil rights.

Because developmentally disabled people can usually do many things on their own, the judge will only give the limited conservator power to do things the conservatee cannot do without help. The conservator may ask the court for the powers to:

- Decide where the limited conservatee will live (NOT in a locked facility)
- Look at the limited conservatee's confidential records and papers
- Sign a contract for the limited conservatee
- Give or withhold consent for most medical treatment for the limited conservatee (NOT sterilization and certain other procedures)
- Make decisions about the limited conservatee's education and vocational training
- Give or withhold consent to the limited conservatee's marriage or domestic partnership
- Control the limited conservatee's social and sexual contacts and relationships
- Manage the limited conservatee's financial affairs (for a limited conservator of the estate)

### **Duty to help develop the limited conservatee's self-reliance**

Overall, a limited conservator's responsibility is to help the limited conservatee develop maximum self-reliance and independence. A limited conservator must get treatment, services and opportunities to help the limited conservatee become as independent as possible. This can be:

- Training or education
- Medical and psychological services
- Social opportunities
- Vocational opportunities

- Other appropriate help

To learn more about limited conservatorships, read the [Handbook for Conservators](#).

### **Mental Health (LPS) Conservatorships**

A mental health (LPS) conservatorship makes one adult (called the “conservator”) responsible for a mentally ill adult (called the “conservatee”). LPS conservatorships MUST be started by a local government agency, usually a county’s public guardian or public conservator. LPS conservatorships last for only one year. If necessary longer than one year they must be restarted and the conservator must be reappointed by the court. The government agency may recommend that a family member of the conservatee be appointed as LPS conservator but this happens usually only after the first year.

These conservatorships are only for adults who are gravely disabled as a result of a mental illness listed in the Diagnostic and Statistical Manual of Mental Disorders (DSM). The most common mental illnesses are serious, biological brain disorders, such as:

- Schizophrenia
- Bipolar disorder (manic depression)
- Schizo-affective disorder
- Clinical depression
- Obsessive-compulsive disorder

LPS conservatorships are not for people with organic brain disorders, brain trauma, developmental disability, alcohol or drug addiction or dementia unless they also have one of the serious mental illnesses listed in the DSM.

### **Duties and Responsibilities of an LPS Conservator**

An LPS conservatorship gives legal authority to the conservator to make certain decisions for a conservatee who is unable to take care of himself or herself. If asked, the court can give an LPS conservator the duty to take care of and protect the conservatee (conservator of the person) and also the power to handle the financial matters of the conservatee (conservator of the estate).

The conservator can consent to mental health treatment even if the conservatee objects. The conservator can agree to the use of psychotropic (mind-altering) drugs. However, the conservatee may refuse to take them if he or she is determined to have enough mental ability to make this decision knowingly and with enough understanding of the consequences.

The conservator can agree to place the mentally ill person in a locked facility if a psychiatrist says it is

necessary and the hospital agrees to take the person whether or not the conservatee agrees. The conservator can decide where the mentally ill person will live when he or she is not in a locked psychiatric facility.

The LPS conservator can also make financial decisions for the conservatee, such as paying the bills and collecting his or her assets and income.

An LPS conservator must have enough medical and social information before making decisions for the conservatee and the conservator must only take actions that are in the best interest of the conservatee.

**THE FOLLOWING FORMS ARE PREPARED FOR A CONSERVATORSHIP PROCEEDING.**

Conservatorship:

- Notice of Hearing, GC-020
- Petition for Appointment of Probate Conservator, GC-310
- Confidential Supplemental Information, GC-312
- Confidential Conservator Screening Form, GC-314
- Citation For Conservatorship, GC-320
- Order Appointing Court Investigator, GC-330
- Ex-Parte Application for Order Authorizing Completion of Capacity Declaration – HIPAA, GC-333
- Ex-Parte Order Re Completion of Capacity Declaration – HIPAA, GC-334
- Capacity Declaration – Conservatorship, GC-335
- Dementia Attachment to Capacity Declaration – Conservatorship, GC-335A [if requested]
- Duties of Conservator and Acknowledgment of Receipt of Handbook for Conservators, GC-348
- Order Appointing Probate Conservator, GC-340
- Letters of Conservatorship, GC-350

Temporary Conservatorship, if requested:

- Petition for Appointment of Temporary Conservator, GC-111
- Order Appointing Temporary Conservator, GC-141
- Letters of Temporary Guardianship or Conservatorship, GC-150
- Notice of Hearing with Personal Service Attachment GC-320 / GC-320(P)

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