

Conservatorship

A Booklet for Lanterman Regional Center Families



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Introduction

When your child with special needs turns 18 years of age, there are many changes that you, as his/her parent, need to take into consideration and be prepared for. One of these changes is that under the law your child has become an adult and you, as parents or caregivers, no longer have the right to make legal decisions for him/her, including health care, work or school, social life and living situation, regardless of the level of your child's special needs.

The question you need to ask yourself is whether your child is ready and has the ability to make adult decisions. If you believe that your child's disability limits his or her capacity to do so, there is a way that you can remain involved and continue to protect your child's well-being, while at the same time encourage him or her to exercise self-reliance and independence. This is through a legal proceeding called conservatorship.

A conservatorship gives legal authority to make decisions for the conservatee, an incapacitated adult. There are different kinds of conservatorships. In California, conservatorship for adults with developmental disabilities usually is achieved through a limited conservatorship. Limited conservatorships were set up to encourage the development of maximum self-reliance and independence and only give the conservator the powers which the court decides the conservatee is unable to engage capably.

Not all adults with developmental disabilities require a limited conservatorship. Many adults with developmental disabilities can make their own decisions with some guidance from family or others.

How Conservatorship Works

Conservatorship is a legal proceeding through which an individual or agency (the conservator) is appointed by the court to protect and manage the personal care or finances, or both, of someone 18 years of age or older (the conservatee) who has been found by the court to be unable to do so for himself or herself. A conservator who is given authority to manage the personal care of another is called “conservator of the person.” A conservator who is responsible for another person’s finances is called “conservator of the estate.” You can be appointed either conservator of the person or conservator of the estate, or both, depending on the needs of your child.

Before the court will agree to appoint a conservator of the person, it must be shown that the proposed conservatee is not able to adequately make decisions concerning his or her own personal needs, including medical care, residence or education. Similarly, a conservator of the estate may be appointed if a person has been shown to be unable to manage his or her own financial resources, or unable to resist fraud or “undue influence” by another. Along with the authority to make decisions for the conservatee, the conservator has a responsibility to make choices that support the conservatee’s wishes and encourage maximum potential.

Types of Conservatorships Recognized in California

Two types of conservatorships are recognized in the state of California. Mental health conservatorships, generally referred to as an L-P-S conservatorship, and probate conservatorships which are referred to by this term because they are defined in laws found in the California Probate Code and may either be general or limited.

Mental Health Conservatorship

A 1969 California law, called the Lanterman-Petris-Short Act, created a legal conservatorship (generally referred to as an L-P-S conservatorship) intended to protect people, including adults with developmental disabilities, whose serious mental illness limits their ability to provide for their own needs for physical care, food, clothing or shelter. It allows the conservator to make decisions for the person in a number of areas of life, and to arrange for certain kinds of restrictive living arrangements and mental health treatment if the person is unable or unwilling to accept these things voluntarily.

Probate Conservatorship

General Conservatorship

The general conservatorship was established for adults who are unable to care for themselves or manage their own finances. People subject to general conservatorships are often elderly, with limitations associated with the aging process. This type of conservatorship may also be applied to people who are seriously impaired for another reason, such as from an accident or illness.

Limited Conservatorship

The limited conservatorship was created specifically for adults with a developmental disability who may need help or support in specific life areas, but who do not need the higher level of supervision provided by a general conservatorship.

The remainder of this document focuses on limited conservatorship as it applies to individuals with developmental disabilities.¹

Limited Conservatorship

This protective legal status is “limited” because it applies only to areas of the conservatee’s life or finances that – in the judgment of the court – he or she is unable to manage independently. In other words, the conservatee retains all legal and civil rights not specifically addressed in the conservatorship order.

Limited Conservatorship of the Person

There are seven areas of a person’s life to which a limited conservatorship of the person may be applied. A conservator has authority (called a “power”) only in the areas where such authority is specifically granted by the court. The court may grant a conservator the power:

1. To decide where the conservatee lives.
2. To have access to the conservatee’s confidential records, including medical records, regional center records, school records, mail, and all other confidential records and papers relating to the conservatee.
3. To make all decisions concerning the conservatee’s education and vocation.
4. To restrict the conservatee’s right to enter into a contract.
5. To give or withhold consent for the conservatee’s medical treatment.
6. To restrict the conservatee’s social and sexual contacts and relationships.
7. To give or withhold consent to the conservatee’s marriage.

In all areas of life, a conservator is required to act in the best interests of the conservatee, and has a responsibility to obtain the treatment, training, education, medical and psychological services, and social and vocational opportunities that will help the conservatee develop maximum self-reliance and independence.

One type of situation in which a conservatorship is very important is when an adult with a developmental disability is required to provide consent for a particular act but is unable to give consent that is truly “informed.” An example of such a situation would be when a patient needs to give informed consent for surgery or

¹ An additional legal protection in California is called guardianship. Guardianship applies only to persons under the age of 18 years. Its principal purpose is to provide protection for a child who has no parent or whose parents can no longer act as parent.

another serious medical procedure. In this case, if the person is over the age of 18, medical professionals will generally not allow a parent to provide the consent unless the parent is the conservator. Another example is when the adult signs a contract for a service, such as mobile phone service, or for a purchase requiring repayment over time, such as purchase of a major appliance. Often, in such a situation, a person with a developmental disability is unable to make a realistic assessment of his or her ability to continue paying over the longer term.

It is important to note that, even if a limited conservator has been given the power to consent to medical treatment, there are certain procedures for which the conservator's consent alone is not sufficient. Additional authority from the court must be provided before a conservatee undergoes sterilization or is provided with mental health treatment against his or her will.

Limited Conservatorship of the Estate

A limited conservator of the estate is necessary only when the conservatee has assets that cannot be adequately managed in another way, such as through a representative payeeship² or by placing assets in a trust. A limited conservator of the estate has authority to manage only those assets of the conservatee that the court specifies in the order that appoints the conservator.

Determining if Your Child Needs Limited Conservatorship

The decision about whether or not you should seek a conservatorship will depend on a number of factors unique to your son or daughter and your family. As you go through the decision process, you may find it helpful to speak to an attorney who is knowledgeable about conservatorship issues. The following are some questions that you should ask to determine whether a conservatorship is right for your son or daughter.

1. Will my child be able to make a good decision on where to live?
2. How well will my child be able to make decisions about financial matters? Will he or she be able to pay bills, manage a bank account, save money? Can some or all of these things be handled effectively through means other than the creation of a conservatorship? For example, if income will be limited to SSI, could he or she manage with the help of a representative payee?
3. Does my child need help when asked to provide informed consent to medical procedures? Is there some way for my child to consent to my continuing involvement in his or her medical care without the creation of a conservatorship?

² Representative payeeship is a form of money management designed for individuals whose disability prevents them from managing their benefit checks (for example, SSI checks) in a way that ensures that their basic living needs are met. A representative payee receives the disability checks of the person with a disability directly. He or she is responsible for ensuring that basic needs, such as rent, utilities, food and clothing, are paid for before allowing the person to spend money on other items.

4. If my child will remain in school until age 22, should I have him or her sign an “Assignment of Educational Decision-Making Authority” (www.disabilityrightsca.org) so I can continue my involvement in his or her educational program?
5. Does the Regional Center believe that my child should be conserved? If not, can they suggest some ways for me to remain involved in my child’s life and help with important decisions without becoming his or her conservator?

When to Apply for a Limited Conservatorship

Most families first think about their child’s need for a conservator as he or she approaches the age of 18. If you are trying to establish a limited conservatorship for someone who will soon be 18, the petition for conservatorship may be filed so that the conservatorship may be effective immediately upon the child turning 18.

Whether or not a family decides to apply for conservatorship as their child approaches the age of 18, this issue should also be discussed when they are writing or amending their wills and/or trust, and planning for their son’s or daughter’s need for supervision after they have died. If they believe that continued supervision will be necessary, they may also want to discuss this with other family members and determine a plan of action.

Eligibility to be a Conservator

Any adult may be a conservator if the court is convinced that he or she will act in the best interests of the person to be conserved. Often parents, adult siblings or other family members are considered as proposed conservators. If two or more equally qualified people apply to be conservator for an individual, the court will give priority to the person chosen by the conservatee, if he or she has made such a selection.

Two or more individuals may serve as co-conservators. The advantage of having more than one conservator is that, if one should die or become unable to serve, there is no need to petition the court for the appointment of a new conservator.

As a general rule, if there are co-conservators, a majority of them must agree to any action. For this reason, it is often cumbersome to have more than three people sharing this role. However, only one signature is required on documents, such as a medical consent.

Private professionals sometimes act as conservators for a fee. In California such people are called professional fiduciaries (www.fiduciary.ca.gov). These individuals must be licensed by the State and are subject to other requirements – such as continuing education and adherence to a code of ethics – to maintain their license. Under certain circumstances, a non-profit corporation may also act as conservator of the person, the estate or both.

Establishing Conservatorship

The process for obtaining a conservatorship begins when the proposed conservator files a petition and additional documents with the Superior Court of the county in which the proposed conservatee lives. The court appoints an investigator to interview the proposed conservatee and make a recommendation to the court about the appropriateness of the conservatorship. The investigator also informs the prospective conservatee of the nature of the proceedings and determines whether he or she is able to attend the hearing. In general, the proposed conservatee is required to attend the hearing unless he or she is unwilling to attend, unable to do so for medical reasons or is out of state, or if his or her attorney waives the appearance.

An attorney is appointed to provide a written and verbal report to the court and to represent the proposed conservatee in the proceedings. The attorney's responsibility is to ensure that the wishes of the conservatee are made known to the court and to make recommendations to the court concerning the conservatorship. The proposed conservator and conservatee cannot have the same attorney representing them.

At the hearing, the judge either grants or denies the conservatorship. If the conservatorship is granted, an Order Appointing Probate Conservator is filed by the attorney for the conservator or the proposed conservator if there is no attorney representing the proposed conservator, but the conservatorship does not actually take effect until Letters of Conservatorship are issued.

Temporary Conservatorship

If a person has urgent immediate needs, a judge may appoint a temporary conservator to serve until a permanent conservator can be appointed. A temporary conservator may also be appointed if a conservator dies or is removed by the court. In any case, when appointing a temporary conservator, the judge sets a specific date on which the temporary conservatorship ends.

Regional Center Role in Conservatorships

When a request is made for conservatorship of a person with a developmental disability, the involved regional center is legally required to make a recommendation about the person's need for this type of protection. The regional center conducts an assessment, generally within 30 days after the filing of a petition for limited conservatorship, of the person's functioning and the nature and degree of disability in each of the seven areas. They submit a written report to the court including the results of the assessment and recommendations concerning the person's need for a conservator in each area. The regional center also makes a recommendation as to the suitability of the proposed conservator to meet the needs of the person.

Next Steps After a Conservatorship is Granted by the Court

Within 30 days of the conservatorship being granted, the conservator must serve the conservatee and other individuals with a Notice of Conservatee's Rights and file that notice with the court.

Filing a Care Plan

Within 60 days of the conservatorship being granted and the conservator appointed, the conservator must file with the court and the court investigator a "Care Plan" that explains in detail how the personal and financial needs of the conservatee will be met. If the court determines that the plan is not in the best interests of the conservatee or if another party objects to the plan, the court will schedule a hearing on the matter.

Filing an Accounting

The conservator must also submit a periodic accounting to the court if the conservatorship includes management of the conservatee's estate. The conservator must file an accounting with the court at the end of the first year and at least every other year thereafter to show the court how the money in the conservatorship is being managed and spent. This accounting must detail all income, assets and expenditures from the conservatee's estate.

Duration of a Limited Conservatorship

A limited conservatorship continues until one of the following occurs:

- The limited conservator dies.
- The limited conservatee dies.
- A general conservator is appointed.
- A judge ends the limited conservatorship.

If the conservatee dies, be sure to notify the court by sending a letter to the court investigator. If you are a limited conservator of the estate, contact your lawyer for help preparing an accounting, if required, or a report to file with the court. The conservatorship and your responsibilities under it will not end until you have done these things and a judge discharges you. If the person has had co-conservators and one of the conservators dies you must notify the court by filing amended Letters of Conservatorship.

The Court's Continuing Role in the Conservatorship

The court continues to be involved in ongoing monitoring of the conservatorship as long as it is in effect. Each conservatorship is reviewed by the court one year after the initial appointment of the conservator and at least every other year thereafter. A court-appointed investigator interviews the conservatee to determine whether the conservatorship continues to be necessary and whether the conservator is acting in the best interest of the conservatee. The investigator may also interview other persons familiar with the conservatee's situation. The investigator submits his or her report to the court and to the conservator or conservator's attorney.

Conservatees are charged what it costs the county to conduct the initial and annual investigations. They are also charged a filing fee when the conservator submits the annual accounting to the court. If the conservatee does not have sufficient funds to pay this cost, or if it would pose a hardship, the court may waive it.

Additional Information, Resources and Assistance with Filing for a Limited Conservatorship

Ask your Lanterman Regional Center service coordinator for information about the Center's workshops on conservatorship, where you can also learn about wills and special needs trusts.

A list of low-cost legal resources and attorneys who know about this special area of the law is available on Lanterman's Network of Care at www.lanterman.networkofcare.org. While it is possible for a family to complete the process of applying for conservatorship without an attorney, many if not most families find it necessary to consult a legal professional during the conservatorship process.

You may also find additional, more detailed information about conservatorships in the Handbook for Conservators, a book published by the Judicial Council of California. This resource is available on the Web at www.courts.ca.gov/documents/handbook.pdf.

Finally, go to www.lacourt.org: Click on Tab on Divisions; Tab on Probate; Tab on Self-Help for self-help information, answers to frequently asked questions and information about training for non-professional conservators.





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