

Probate Conservatorships in California

CANHR is a private, nonprofit 501(c)(3) organization dedicated to improving the quality of care and the quality of life for long term care consumers in California.

What is a Probate Conservatorship?

When someone is no longer able to handle his or her own financial and/or personal affairs, a state court can appoint an individual (the conservator) to act on behalf of the incapacitated person (the conservatee)¹. The judicial procedure for this appointment is called a probate conservatorship. The establishment of a conservatorship restricts the conservatee's powers over financial and/or personal care decisions.

How is this different from an LPS conservatorship?

LPS conservatorships are established under the Lanterman-Petris-Short Act and are governed by the California Welfare and Institutions Code (instead of the Probate Code). In this kind of conservatorship, a conservator is appointed to represent a person who is "gravely disabled." LPS conservatorships are designed for persons with serious mental disorders, or who are impaired by chronic alcoholism. This fact sheet is about probate conservatorships, not about LPS conservatorships. For information regarding LPS conservatorships, contact Disability Rights California at www.disabilityrightsca.org.

Conservator of the Person vs. Conservator of the Estate

A Conservator of the Person is appointed to make decisions about personal matters for the conservatee, including decisions about health care, food, clothing, and residence.

A Conservator of the Estate is responsible for handling the financial affairs of the conservatee. The conservator has the power to collect the conservatee's assets, pay bills, make investments, etc. However, the conservator must seek court supervision for major transactions, such as the purchase or sale of real property, borrowing money, and gifting of assets.

A conservatee can have different people as the conservator of person and estate or one person can serve in both functions. Some conservatees may have only a conservator of the person, or only a conservator of the estate.

Advantages of a Conservatorship

A conservatorship offers more protection against abuse of the conservatee than other devices because the court supervises the conservator. The conservator must first file with the court an inventory listing all the conservatee's property, and later, accountings that reflect all transactions involving the conservatee's income and assets. A conservatorship can be helpful as a structured mechanism for managing an incapacitated person's affairs when no other mechanism is in place, especially when that person is reluctant to accept assistance.

Disadvantages of a Conservatorship

The court is heavily involved in the conservatorship process, and this can result in substantial costs in attorney's fees, filing fees, and investigator's fees. The proceeding is public, so the conservatee's assets

¹ In some states, this procedure is called a guardianship, and conservatees are called wards.

become a matter of public record. The conservator must continually return to court for approval of certain transactions, which require hearings and additional fees and can create delays in completing the transactions. Another important disadvantage is the potential for a massive loss of individual rights by the conservatee.

Conservatorships and Nursing Homes

A conservatorship can be used to plan for Medi-Cal benefits for a person who is incapacitated and may need to enter a nursing home. For example, a conservator may petition the court for approval of appropriate Medi-Cal planning transactions, such as transferring a home or other assets.

Conservatorships and Mental Institutions

Under a Probate Conservatorship, the conservator may not place the conservatee into a locked mental institution against his or her will. However, under an Lanterman-Petris-Short Act (LPS) conservatorship, a person who has been found to be “gravely disabled” can be involuntarily committed to a mental institution. An LPS conservatorship must be initiated by the county government; it cannot be petitioned for by a spouse or relative.

Assessment Factors

In determining whether an individual has lost mental capacity to the extent that a conservatorship is warranted, many factors will be considered. For a general idea, see: Assessment Factors²

How is a conservatorship established?

The Petition

The conservatorship process begins when someone proposes to the court that he or she should be appointed conservator over a proposed conservatee. This “proposal” is officially known as a petition for conservatorship.

Who can petition for a conservatorship?

- A relative, friend, public official, nonprofit agency, or professional conservator may petition the court to be appointed conservator of an individual.³
- To obtain a conservatorship, the proposed conservator must be bondable; that is, a surety agency must be willing to issue a bond ensuring that the conservator will faithfully execute his or her duties.⁴
- Generally, in order to obtain a bond, a conservator must be represented by an attorney.

What does the petitioner need to do?

- To obtain a conservatorship over the person, the petitioner must prove to the court by clear and convincing evidence that the proposed conservatee is “unable to provide properly for his or her personal physical needs, including: health, food, clothing, or shelter.”⁵
- To obtain a conservatorship over the estate, a petitioner must prove to the court by clear and convincing evidence that the proposed conservatee is “substantially unable to manage his or her own financial resources or resist fraud or undue influence.”⁶

2 Probate Code §§ 810-813

3 Unlike a probate conservatorship, an LPS conservatorship must be initiated by the county government—a spouse or relative cannot petition for it.

4 Probate Code §2320

5 Probate Code §1801 (a)

6 Probate Code §1801 (b)

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- The petitioner must also list for the court all possible alternatives to the conservatorship and the reason or reasons each alternative is unsuitable or unavailable.⁷ Possible alternatives include: Voluntary acceptance of informal or formal assistance, a special or limited power of attorney, a general power of attorney, a durable power of attorney for finances, advance health care directive, estate management, and a trust.

The court investigator and the hearing

Once a petition is filed with the court, a court investigator is appointed to interview the proposed conservatee. The investigator reports his or her findings back to the court.

The court will set a hearing where the judge determines whether or not the conservatorship is required and what types of special powers may be granted to the conservator. The conservatee has the right to a jury trial if he or she desires one.

What is a temporary conservatorship?

If the proposed conservator can prove to the court that an emergency exists, he or she may obtain a temporary conservatorship on an expedited basis. Through a temporary conservatorship, the conservator can provide the conservatee with immediate care, maintenance or support (for a conservatorship of the person), or to protect his or her property from loss or injury (for a conservatorship of the estate). The temporary conservator serves for a limited time, pending the determination of the main petition.⁸

What is a limited conservatorship?

Limited conservatorships are available for persons who have a developmental disability⁹ and who only need help with certain areas of their lives. If the conservator is petitioning to be a limited conservator, he or she will petition for the right to perform certain duties. If appointed, the limited conservator will have the power to take care of only those aspects of the conservatee's life and financial affairs specified in the court order. The conservatee retains all other legal and civil rights.

Dementia Powers

Conservators may seek special powers for conservatees who suffer from dementia. The special powers allow a conservator to place the conservatee in a locked facility specially designed for the treatment of dementia and to authorize psychotropic medications meant to treat dementia. Conservators normally do not have these powers and require special court approval.

Conservatorships are public proceedings

Conservatorships are public proceedings: the conservatee's assets, income, and expenses become a matter of public record. However, California law requires that the petition for conservatorship include a form entitled "Confidential Supplemental Information." In this confidential document, petitioner lists the facts showing why the conservatorship is warranted (why the proposed conservatee is unable to properly provide for his or her personal care or substantially manage his or her own resources, among other things).¹⁰

7 Probate Code §1821

8 Probate Code §2250(a)(b)

9 A "developmental disability" means a disability that originates before an individual attains age 18, continues, or can be expected to continue, indefinitely, and constitutes a substantial handicap for such individual. See Probate Code §1420.

10 The name of this form is "GC-312." It can be found at: <http://www.courtinfo.ca.gov/forms/documents/gc312.pdf>. See also Probate Code §1821.

Notice and Special Notice

The court will hold public hearings to do things like establish a conservatorship, approve a conservator's accountings, and hear objections to an accounting. California law requires that notice of these hearings must be given to the following individuals:¹¹

- The conservator
- The conservatee/proposed conservatee
- The spouse or registered domestic partner of the conservatee/proposed conservatee
- Interested parties, if they have requested "special notice"¹²
- Beginning January 1, 2008, relatives of the conservatee/proposed conservatee

What are the duties of a conservator?

If a conservator of the estate is appointed, the conservator must:

- Obtain a bond as a guarantee that he or she will faithfully perform the required duties.
- Manage the estate's assets with the care of a prudent person dealing with someone else's property, keeping estate assets in interest-bearing accounts and ensuring that the assets are separate from anyone else's assets.
- File an inventory of the conservatee's property.
- Determine that there is appropriate and adequate insurance covering the assets and risks of the estate.
- Keep complete and accurate records of each financial transaction affecting the estate.

If a conservator of the person is appointed, the conservator must:

- Obtain a bond as a guarantee that he or she will faithfully perform the required duties.
- Assess the conservatee's needs.
- Decide where the conservatee is to live, choosing the "least restrictive," appropriate living situation that is safe and comfortable and allows the conservatee as much independence as possible.
- Ensure that the conservatee's health needs are met, if medical authority has been granted.
- Work with the Conservator of the Estate, if there is one.

Are conservators paid for their services?

At least 90 days after being appointed, the conservator of the estate may petition the court for payment for the services of the conservator of the estate, conservator of the person, or both. The court will make an order allowing any compensation the court determines is just and reasonable, including compensation to attorneys of the conservator of estate, person, or both. Some courts may expressly limit the compensation allowed; for example, San Francisco courts require that the fees of conservators of the estate not exceed 1% of the fair market value of assets at the end of the accounting period. The compensation allowed will be charged to the estate.¹³

11 Probate Code §1460 (b)(1-4)

12 Under Probate Code §2700, interested parties may request special notice of petitions filed in the guardianship or conservatorship proceeding, inventories and appraisals of property in the estate, accounts of the guardian or conservator, and proceedings for the final termination of the guardianship or conservatorship proceeding.

13 Probate Code §2640

Who are professional conservators?

Professional conservators earn a living from compensation for their services as conservator of the person, the estate, or both. They usually manage the affairs of several conservatees at once. Many are members of the Professional Fiduciary Association of California. See: <http://www.pfac-pro.org/pages/index.htm>.

In the past, there had been problems regarding the integrity with which some professional conservators manage their incapacitated clients' funds. Due to the passage of the Omnibus Conservatorship and Guardianship Reform Act of 2006, more stringent standards have been enacted regarding conservatorship oversight. Here are some of the specific ways that oversight has been strengthened:

Conservators are required to adhere to more stringent standards regarding selection of a conservatee's residence. (Probate code sections 2352ñ2591)

- Courts review conservatorships more frequently (at six months and one year after the initial appointment and yearly thereafter). (Probate Code § 1850(a))
- Courts review conservators with more scrutiny. Court investigators are required to fully investigate a conservatee's living situation, quality of care and finances, and any proposed moves. (Probate Code § 1851(a))
- Courts will be able to review a conservatorship at any time on its own motion. (Probate Code § 1850(b))
- Investigations are conducted without prior notice to the conservator. (Probate Code § 1851(a))
- Court investigators are permitted to inspect and copy all of the conservator's records, including expenditures/receipts. (Probate Code § 1851(a))
- Accountings submitted by conservators are subject to thorough and more scrutinizing review. (Probate Code § 2620 (c), (d), (e))
- Qualification and education requirements have been raised for court investigators, conservators, courtñemployed staff attorneys, courtñappointed counsel, and examiners. (Probate Code § 1456)

Uniform standards of conduct have been developed to govern the actions that conservators may take on behalf of conservatees. (Probate Code § 2410)

Where can I find information about professional conservators?

The Professional Fiduciaries Bureau was created by legislation that passed and was enacted into law in 2007. The Bureau is managed by California's Department of Consumer Affairs and has an informational web site for both professional conservators and their clients. Professional Fiduciaries Bureau The web site allows the public to find out whether a conservator is licensed as a professional fiduciary and to review and file complaints.

Professional fiduciaries provide critical services to seniors, disabled persons, and children. They manage matters for clients including daily care, housing and medical needs, and also offer financial management services ranging from basic bill paying to estate and investment management. Requirements for licensing include passing an examination and completing thirty (30) hours of approved education courses (See Pre-Licensing Education Information), and earning fifteen (15) hours of continuing education credit each year for renewal. Licensees must comply with reporting requirements and must abide by the Professional Fiduciaries Code of Ethics so that client matters are handled responsibly and without conflict.

Who is the public guardian?

Each county has a public guardian. The public guardian is a public official who may be appointed to serve as a conservator when a person needs a conservatorship but no one has petitioned to be the conservator. Due to the passage of recent legislation (Omnibus Conservatorship and Guardianship Reform Act of 2006), the Public Guardian is now required to apply for appointment as conservator for any person whose health or safety or estate is in imminent danger. Also, the court must order the public guardian to apply for conservatorship for anyone who appears to need a conservator if there is no one else who can do it and it would be in the best interest of the person. If the person has any assets, compensation for the public guardian's services is taken from the conservatee's estate. All funds coming into the custody of the public guardian are deposited or invested in the same manner as deposit or investment by the public administrator. (The Public Administrator is charged with investigating and administering the estates of persons who die with no will, or without an appropriate person willing or able to act as an administrator.) Services provided by the Office of the Public Administrator/Public Guardian are authorized by California Law and monitored by the Probate Division of the Superior Court of California.

What if the conservatee has already executed a Durable Power of Attorney for finances (DPA) or for healthcare (Advance Health Care Directive-AHCD)?

Having an agent under a DPA or an AHCD may make it less likely that you will need a conservatorship, but it does not mean you cannot be conserved. Your agent may renounce his or her power to manage your affairs. Or, if your agent does not renounce this power, a judge reviewing a petition for conservatorship may order that all prior DPAs be set aside. If prior DPAs are not revoked or renounced, however, the conservatorship does not automatically annul them. Thus, it is possible that both the conservator and the agent under a DPA might end up with power over a conservatee's assets. If a conservatee previously appointed an agent to manage his or her health care decisions under an Advance Health Care Directive, the agent will usually retain that power.

An important difference to remember between a DPA/AHCD and a conservatorship is that with a DPA or AHCD, the principal gives the agent the power to do certain things. With a conservatorship, not only is the conservator given the power to act on the conservatee's behalf, but the conservatee loses the right to do some things for him/herself, such as enter in a contract.

If someone is petitioning to be your conservator, you have the right to:

- Receive notice of hearings regarding the conservatorship.
- Appear at the hearings and oppose the petition for conservatorship.
- An attorney. If you do not have an attorney, you have the right to request that the court appoint one. Note: Your assets will be used to pay the attorney appointed to represent you.
- A jury trial if desired.¹⁴

If you are a conservatee (you have been conserved), you have the right to:

- Ask a judge to change conservators or to end the conservatorship.
- Vote, unless the judge says you're unable to do so.
- Marry.
- Control personal spending money if a judge says you can have an allowance.
- Make or change your will (unless the court grants this right to your conservator).¹⁵

14 California Probate Code §1823

15 Probate Code §2580 (b)(13)

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- Make your own healthcare decisions, unless a judge gives that right to a conservator (a judge will only give this right when a doctor has certified that the conservatee does not have capacity to consent to his or her own medical treatment).
 - Be treated with understanding and respect.
 - Have your wishes considered.
 - Be well cared for.

If you think someone needs to be conserved...

A conservatorship is a complex, expensive process, and anyone seriously considering petitioning for one should see a lawyer who specializes in Elder Law. The lawyer should help you to answer the following questions:

Would a conservatorship solve the problem?

There are alternatives to conservatorships, such as durable powers of attorney, living trusts, and money management programs at senior service agencies, that may better solve the problem at hand. Also, conservatorships may end up creating new problems. If your objective is to protect an elderly person's finances from undue influence, it is important to understand that a conservatorship (of the estate and/or person) will drain considerable amounts of money from the conservatee's estate. If you think a professional conservator might best manage a conservatee's finances so as to allow the conservatee to stay at home, you should understand that you and the conservatee could be powerless if the conservator, once appointed, determines that the sale of the conservatee's home is the conservatee's only financial option.

If the conservatorship could solve the problem, can it be obtained?

Petitioning for conservatorship requires proving to the court that the proposed conservatee lacks the ability to manage his or her affairs. You will need to provide evidence, such as unpaid bills or proof of physical self-neglect, that may be difficult or uncomfortable to come by. To be appointed conservator, you will need to hire an attorney and secure a bond. You will need to convince the court that you will fulfill your legal responsibilities to manage the conservatee's affairs. A conservatorship will have serious effects on the conservatee's life, and the court will not take the petition lightly.

If you oppose a conservatorship...

A conservatee may always contest the granting of a conservatorship or may object to the proposed conservator. The conservatee has the right to an attorney to help fighting the conservatorship. The conservatee need only tell the court that he or she would like to contest the conservatorship or wants an attorney. Under Probate Code §1301, a court's decision to grant a conservatorship, can be appealed.

If you oppose an action taken by a conservator. . .

- Under Probate Code §1300, you can appeal what the court authorizes the conservator to do. For example, you can appeal an order authorizing the sale of property or an order fixing payment of the compensation or expenses of an attorney.
- Under Probate Code §2622, you may file written objections to accountings filed by conservators, stating the items to which objection is made and the basis for the objection.

If you want to replace a conservator with a different conservator. . .

- The ward or conservatee, the spouse of the ward or the spouse or domestic partner of the conservatee, any relative or friend of the ward or conservatee, or any interested person may apply by petition to the court to have the guardian or conservator removed. The petition shall state facts showing cause for removal.¹⁶
- If a conservator is removed, or if for any other reason a vacancy occurs in the office of conservator, the court may appoint a successor conservator.¹⁷ The conservatee, the spouse or domestic partner of the conservatee, a relative of the conservatee, any interested state or local entity or public official, and any other interested person or friend of the conservatee may petition for appointment of successor conservator.¹⁸

16 Probate Codes §§2650a and 2651

17 Probate Code §2680

18 Probate Code §2681