

FAQ's Regarding Probate Conservatorship Problems

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 do I need to do to fight a conservatorship?

The first thing you should do is find an attorney to represent you. All proposed conservatees have the right to an attorney. If the court has not already appointed an attorney to represent you, all you need to do is ask. Attorneys appointed to represent conservatees often do not like to fight hard against conservatorships. If you don't like your attorney, ask the court to appoint a new attorney. You can also find an attorney yourself and ask the court to appoint him or her.

The key to fighting your conservatorship is to demonstrate that you do not meet the criteria. You need to be able to show that you can meet all of your basic needs for food, clothing, and shelter, and that you can pay your bills and manage your financial affairs. For more details on fighting conservatorships, see CANHR's "California Conservatorship Defense – A Guide for Advocates."

Will fighting the conservatorship cost me money?

If you have money, all costs of the conservatorship, including your defense, are payable by your estate. Conservatees are expected to pay for both the conservator's costs and their own costs. This often means that conservatees who fight their conservatorships have to pay twice as much as they might expect. Not only do they have to pay for their defense, they also have to pay for the conservator's case in response. If the conservatee can prove that the conservator was acting in bad faith, he or she may be able to avoid having to pay the conservator's costs.

If the conservatorship has already been granted, can I still fight it?

Yes. A conservatee can challenge the conservatorship at any time. The easiest way to challenge a granted conservatorship is to tell the judge who granted it in the first place. Sometimes a letter will work. The best way is to file a Petition to Terminate the conservatorship. If you had an attorney in the original case, he or she might help you or you can ask the court to appoint a new attorney for you. You will have to prove that you no longer meet the criteria for conservatorship- that you can provide for your own food, clothing, and shelter as well as handle your own financial affairs.

What do I do if I want to get rid of my conservator?

You have a couple of options. You can ask the court to terminate the conservatorship, or you can ask the court to give you a new conservator. To terminate the conservatorship, you have to prove that you no longer need it. To receive a new conservator, you will need to do one of two things.

One way to get a new conservator is to show that your conservator is making decisions that are not in your best interests. For example, demonstrating the conservator is mismanaging your money. Another way a conservator may be making decisions that are not in your best interest is if he or she is trying to send you to an institution without trying less restrictive options first. Also, conservators who are not at least consulting with their conservatees before making important decisions are not fulfilling their duties.

The second way to get a new conservator is to find a suitable replacement and ask the court to name him or her as your new conservator. In these cases, the conservator should file a Petition to Terminate the conservatorship and have the new conservatee simultaneously file a Petition for Conservatorship. That way, the judge can terminate the old conservator and appoint the new conservator.

Can I file a complaint about my conservator?

There are a couple of options for complaining about a conservator. One is to write a letter to the judge overseeing the case. Another is to write to the court investigator assigned to the case. If the conservator is the local public guardian, you could complain to a supervisor, the appointed Public Guardian, or a member of the County Board of Supervisors.

If the conservator is a professional, private fiduciary, you can file a complaint with the Professional Fiduciaries Bureau. A private fiduciary is anyone acting as a private conservator but is not related to the conservatee or acts as private conservator for two or more people. You can download the complaint form from the Bureau's website, http://www.fiduciary.ca.gov/consumers/file_complaint.shtml. The Bureau can issue citations and fines against the private fiduciary, as well as suspend or revoke the fiduciary's license, but it cannot resolve civil complaints against the fiduciary. The Bureau's website has links to resources for solving a civil dispute with your private fiduciary.

My mother is conserved by someone else. Can I become her conservator?

Maybe. You will have to demonstrate that you would be a more suitable conservator. Courts usually give preference to family members as conservators if all other qualifications are equal. Another factor that could help your petition is if your mother can express a preference that you be her conservator. Even if your mother can express her preference, however, the court will be reluctant to change conservators unless you can show either the current conservator is inadequate or you have superior qualifications.

How can I get rid of my mother's conservator?

There are a few options for replacing your mom's conservator or terminating her conservatorship. Many of the suggestions made above are applicable. If you believe that your mom's conservator is mismanaging her money, you will have to put together clear evidence, preferably in writing. If you believe the conservator is not acting in your mom's best interests, you should also put together your case in writing. Once you have your case together, CANHR recommends you see an attorney to help you with presenting it to the court. If you cannot find an attorney, present the documentation yourself as part of a Petition to Terminate the conservatorship. If you cannot draft a Petition, you should at least write a very detailed letter to the judge in charge of probate conservatorships and enclose your documentation.

The key to challenging your mother's conservator will be the evidence of his or her misconduct. Unproved allegations will not likely do you much good.

Where can I get help to fight or challenge a conservatorship?

Some courthouses have self-help clinics for conservatorship issues. Some communities have free legal services programs that may be willing to help with conservatorship matters. And, of course, local attorneys may be able to help. CANHR recommends you call your local courthouse, legal services organizations, and county bar association for assistance. The state court website also has information about conservatorships at their Self Help Center page, <http://www.courtinfo.ca.gov/selfhelp/seniors/>.