



Fact Sheet:

Conservatorship and Guardianship

When someone is no longer able to handle his or her own financial or personal affairs, the court can appoint an individual or professional to act on behalf of the incapacitated person. When a minor child is involved, it is generally called a guardianship. When an adult needs someone, it is called a conservatorship. However, states define these terms differently, and you need to consult an attorney in your state to determine what the laws are and how they impact your situation.

Why a Conservatorship?

When someone is no longer competent to manage his or her own affairs and is no longer able to delegate someone to do it for him/her, a conservator can make the necessary decisions. A conservatorship provides a higher degree of protection for the conservatee than other alternatives due to court oversight of the conservatee.

Alternatives

If someone has made plans in advance through Powers of Attorney, living trusts, etc. then a conservatorship might not be necessary. A revocable living trust can appoint a trustee to manage financial affairs, but the individual must be competent at the time the trust is established. The trust spells out the conditions necessary for a trustee to take over. Another option is a Durable Power of Attorney for Asset Management, which delegates to an agent the power to make financial

transactions on behalf of an individual if he/she is unable to do so himself. These transactions are not subject to court review.

How Does a Conservatorship Work?

A conservatorship may be established after a relative, friend or public official petitions the court for appointment of a conservator. The petition must contain information on why the individual cannot manage his financial affairs or make appropriate decisions concerning his or her personal care. Once a petition is filed with the court, a court investigator is appointed to interview the proposed conservatee and to determine if the individual is truly incapacitated and whether appointment of a conservator is justified. The investigator reports back to the court with an opinion.

Family and interested parties are notified of the proceedings and may testify in court. The petition is set for hearing, and the conservatee must appear in court unless medically unable to do so. The judge determines, based on the petition, the investigator's report, and any evidence taken during the hearing, whether or not the conservatorship is required, and what types of special powers may be granted to the conservator. A court investigator visits the conservatee regularly to determine whether a conservatorship is still necessary.

Costs

The cost of a conservatorship may be high, as an attorney must be hired to represent the individual and all family members and interested parties must be notified of the hearing. Outside of the cost of hiring an attorney, there are court filing fees, legal fees, investigator's fees, and conservator's fees. Returning to the court for approval of transactions requires additional attorney's fees and can create delays in completing transactions. Professional conservators are paid out of the funds in the conservatee's estate. If a family member has been appointed, he/she is also entitled to be paid an hourly fee for services performed. For those without funds, the court can appoint a public guardian who is an employee of the jurisdiction in which the individual lives and is paid for by the jurisdiction.

Advantages of a Conservatorship

While the court supervision makes a conservatorship more costly and time-consuming than other methods of management, it offers a higher degree of protection to the conservatee than other management mechanisms. The conservator must file an inventory that lists all the property of the conservatee and must file accountings with the court that reflect all transactions involving the conservatee's assets. When a family is having trouble agreeing on what should be done, a conservator can be the neutral party whose only concern is the best interest of the individual. Another advantage to a conservatorship proceeding is that it provides a structured method to assist an incapacitated individual who may be reluctant to accept such assistance.

Disadvantages of a Conservatorship

Details of a conservatorship hearing become part of a public record, which is accessible by anyone. This loss of privacy can be hard for the individual conserved. The individual also loses independence and power to make his/her own decisions. Petitioning the court to make major changes can be costly, time-consuming, and cumbersome process. Although it is possible to get an emergency temporary conservatorship, the process of establishing a permanent conservatorship can take six months.

Placement in a Care Community or Nursing Home

If a person does not object to going into a nursing home, a relative may sign the admission agreement as an agent or as a responsible party to place the person there. However, if a person refuses and placement is necessary for proper care, a conservatorship is required. The conservator is required to find the least restrictive placement for the conservatee that his/ her financial situation will allow.

Terminology

Probate conservator: A judicial procedure in which someone (a conservator) is appointed to manage another person's (the conservatee) financial and/or personal affairs. The conservatee loses the power to make decisions on his or her own behalf in these matters.

Conservator of the person: A person appointed by the court to make decisions about personal matters for the conservatee, including decisions about medical care, food, clothing, where the

person will live (In some states there are rules about placing someone in a locked mental institution against his or her will). The conservator must file reports to the court once a year.

Conservator of the estate, conservator for finance: A conservator that handles the financial and legal affairs of the conservatee. The conservator has the power to collect all the conservatee's assets, pay bills, make investments, etc. The conservator must seek court supervision for major transactions, such as purchase or sale of property, borrowing money and gifting of assets. The conservator must give a financial record of all expenditures to the court once a year.

LPS conservatorship (Lanterman-Petris-Short Act): This form of conservatorship is for an individual who has been found to be "gravely disabled" and can be used to involuntarily commit him/her to a mental institution. It is designed for persons with serious mental disorders or who are impaired by chronic alcoholism or drug abuse. An LPS conservatorship, unlike a probate conservatorship, must be initiated by the county government—a spouse or other relative cannot petition for an LPS conservatorship.

Resources

Southern Caregiver Resource Center
891 Kuhn Drive, Ste. 200
Chula Vista, CA 91914
(858) 268-4432 | (800) 827-1008 (in CA)
E-mail: scrc@caregivercenter.org
Website: www.caregivercenter.org
Southern Caregiver Resource Center offers free support services to

caregivers of adults with chronic and disabling conditions in San Diego and Imperial counties. Services include information and referral, needs assessments, care planning, family consultation, case management, individual counseling, legal and financial consultation, respite care, education and training, and support groups.

**Family Caregiver Alliance
National Center on Caregiving**
(415) 434-3388 | (800) 445-8106
Website: www.caregiver.org
E-mail: info@caregiver.org

Family Caregiver Alliance (FCA) seeks to improve the quality of life for caregivers through education, services, research and advocacy. Through its National Center on Caregiving, FCA offers information on current social, public policy and caregiving issues and provides assistance in the development of public and private programs for caregivers.

State Bar of California
www.calbar.ca.gov

California Advocates for Nursing Home Reform (CANHR)
www.canhr.org

CANHR provides advocacy, consumer education, and legal information throughout California on nursing home-related issues.

Nolo
www.nolo.com

Self-help legal publisher publishes on conservatorship and guardianship as well as many other issues affecting caregivers.

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