

CONSERVATORSHIP-THE BASICS

What is it?

Every person age eighteen or older has the absolute right to make his or her own decisions. No one can legally make decisions for another person without that person's consent (Power of Attorney) or a Court order (Conservatorship).

Conservatorship is a protective proceeding where the Court appoints an appropriate person (the Conservator) to make decisions for another person (the Conservatee) who does not have the ability to make those decisions for himself/herself. The conservatorship takes away the right of the Conservatee to make decisions for himself/herself and gives the power to make the decisions to the Conservator.

With a conservatorship of the person, the conservator manages the personal care of the conservatee because he/she is unable to make informed decisions about his/her personal needs including medical care, food, clothing, or shelter.

With a conservatorship of the estate, the conservator manages the financial affairs of the conservatee because he/she is unable to manage his/her own financial resources and is unable to resist fraud or undue influence.

A conservatorship of the person or the estate can be either a general conservatorship or a limited conservatorship. The powers of a general conservator are as broad as allowed by California state law. The powers of a limited conservator are limited to no more than seven specific powers depending on the abilities the limited conservatee. Those seven specific powers are:

1. The power to fix the residence or specific dwelling of the limited conservatee;
2. The power to access the confidential records and papers of the limited conservatee;
3. The power to consent or to withhold consent to the marriage of the, or the entrance into a registered domestic partnership by, the limited conservatee;
4. The power to enter contracts with the limited conservatee having no right to contract for himself/herself;
5. The power to give or withhold medical consent;
6. The power to control the limited conservatee's social and sexual contacts and relationships;
7. The power to make decisions regarding the limited conservatee's education.

The limited conservatorship was created specifically to serve the needs of the developmentally disabled and recognizes that there is a broad spectrum of abilities among the developmentally disabled. The limited conservatorship only takes away decision-making authority in specified areas and allows the limited conservatee to maintain as much decision-making ability as he/she is capable of.

How do I get conservatorship?

A conservatorship proceeding is started by filing a Petition for Appointment of Probate Conservator and a number of supporting documents. The Court sets a hearing date that is usually at least six to eight weeks after the Petition is filed. A Probate Court Investigator is assigned to investigate the matter and make recommendations to the Court as to whether a conservatorship is necessary and whether the proposed conservator(s) is the appropriate person to act as conservator. The Court appoints an attorney to represent the interests of the proposed conservatee in all limited conservatorship proceedings and some general conservatorship proceedings, when the proposed conservatee suffers from dementia. When the proposed conservatee is developmentally disabled, the Regional Center is also given notice of the hearing and reports its recommendations to the Court. In all conservatorship proceedings, certain family members are also given notice and have the opportunity to object to the appointment. If everybody involved provides the necessary information to the Court in a timely manner and the recommendations support conservatorship, the Court will appoint the conservator at the hearing on the Petition and issue an Order Appointing Probate Conservator. Then, Letters of Conservatorship are issued to the Conservator and the Letters show the Conservator's authority to make decisions for the conservatee.

If you have a loved one who is unable to manage his/her own affairs, personal and/or financial, due to disability, illness or injury, please contact our office for further information and assistance.