



Senior Legal Hotline

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SENIOR LEGAL FACT SHEET

Conservatorship

A conservatorship is a court procedure in which a court appoints a person, called a conservator, to manage another person's (the conservatee's) personal and/or financial affairs. A conservatorship takes away a person's basic rights to freedom of choice and control over his own life by removing the conservatee's power to make financial and personal care decisions.

When is a conservatorship necessary?

A conservatorship may be necessary when a person is unable to manage his or her financial affairs or personal care and if there is no viable alternative.

Responsibilities of the conservator:

Anyone can "petition" the court for appointment to handle the personal care ("conservator of the person") and/or financial affairs ("conservator of the estate") of an adult who is unable to do these things on her own. Among the conservator's responsibilities can be decisions about medical care, food, clothing, residence, legal affairs and financial management. A conservator has the duty to ensure that the conservatee lives at the highest standards possible, given her financial means and ability to maintain independence. A conservator of the estate must file an inventory of the conservatee's property, along with records of all transactions.

Cost of conservatorship:

Obtaining a conservatorship can be very expensive. Costs include court filing and investigator fees. Amounts vary by county, but these are typically several hundred dollars each, though waivers are available for petitioners who meet low-income limits. When a private attorney is used, the fees typically start at about \$1,500. Occasionally, attorneys are available pro bono (free of charge) to assist in conservatorship cases for very low-income people. Private conservators must also be paid if employed.

Types of Conservatorship:

Probate: A petition can be filed by a relative, friend, professional conservator or the county public guardian. The conservator's powers may be limited or expanded to include whatever the court decides in the particular case.

LPS (Lanterman, Petris, Short Act): When a person is found to be "gravely disabled" and "a danger to self and others," the county may initiate an LPS conservatorship. It is designed for people with serious mental disorders or who are impaired by alcoholism or

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drug addiction. A relative or friend cannot petition for LPS conservatorship, which permits severe measures such as involuntary commitment to a locked mental health facility, for instance, something a probate conservator cannot do without special court orders.

- ▶ Both types require a hearing in the county probate court and an order from the judge.
- ▶ In either type of proceeding, the court will appoint an attorney to represent a proposed conservatee who objects to the conservatorship if she can't afford it privately.
- ▶ A new court hearing is required if a conservatee wants to end the conservatorship or if someone else wants to replace the conservator, or if anyone wants to amend the terms.

Alternatives to Conservatorship:

Most people prefer to avoid a conservatorship if possible. The most effective way to do this is to prepare and sign a durable power of attorney for finances and an advance health care directive while you have mental capacity. With these documents, you can empower someone you trust and who knows your wishes to make decisions for you if you become incapacitated in the future. No matter what your age and health, it's good to plan for what could happen in the future.



The Senior Legal Hotline has fact sheets available with more details on all these alternatives; call to receive them, or print them from the web site. And after speaking with a hotline advocate, seniors can receive kits for powers of attorney or advance health care directives. Call or e-mail from the web site to have a confidential conversation.

Other alternatives to conservatorship include appointment of a “representative payee” for receipt of Social Security or other benefits, and establishing joint ownership of accounts or property. All of these methods have pros and cons, and if power is given to the wrong person, they can be abused.

Conservatorship services the Senior Legal Hotline can provide

The Senior Legal Hotline considers an older person who is the subject of a call to be our client. If a conservatee or potential conservatee is unable to speak with us, the assistance we can provide to a potential conservators may therefore be very limited, to avoid any conflicts of interest. SLH advocates can consult by phone to help potential conservators make informed decisions. They can assist callers understand the responsibilities of conservatorship and explore possible alternatives in the best interest of an older client. The hotline can also provide written material and offer suggestions on finding an attorney if necessary.

Additional resources include *The Conservatorship Book*, published by Nolo Press (out of print, unfortunately, but may still be available used or at libraries), your county probate court, which may offer self-help services, or the county public guardian.

If you are over 60 in California, you can get free advice by phone from the Senior Legal Hotline regarding your questions about this or any other legal issue. Call (916) 551-2140 in Sacramento or (800) 222-1753 toll-free in California, Mon.-Fri. 9 to 12 and 1 to 4, until 7 p.m. on Thursdays. Or submit your question by e-mail from our web site, www.seniorlegalhotline.org