

Conservatorships



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What is a Conservatorship?

A court case where a judge appoints a responsible person (a “conservator”) to care for another adult (a “conservatee”) who cannot care for her/himself.

General Conservatorship

Applies to an incapacitated person who does not have a developmental disability (for example, an elderly person with dementia).

Limited Conservatorship

Applies to an incapacitated person with a developmental disability. The powers granted to the conservator are limited to specific powers allowed by law and chosen by the court.

LPS Conservatorship

Applies to a “gravely disabled” person (mental illness)

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LPS Conservatorship

- Lanterman-Petris Short Act
- “A condition in which a person, as a result of a mental health disorder or chronic alcoholism, is unable to provide for his or her basic personal needs for food, clothing, or shelter.”
W&I Section 5008(h)
- Doctor makes recommendation to the
- Public Guardian’s office to start an investigation
- Must be renewed yearly

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5150 Hold

- Law officer or mental health professional takes an individual into custody and places them in a locked mental health facility
- Danger to themselves or danger to others
- Starts as a 72-hour hold but can be extended
- Usually LPS conservatorship requires multiple involuntary holds

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LPS Conservatorship

WIC § 5250(d): A person is not “gravely disabled” if that person can survive safely without involuntary detention with the help of responsible family, friends, or others who are both willing and able to help provide for the person's basic personal needs for food, clothing, or shelter.

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Conservatorship of the Person

Grants the conservator the power to make non-financial decisions related to the conservatee, such as place of residence, medical treatment, and education.

Conservatorship of the Estate

Grants the conservator the power to manage the conservatee's assets other than wages and public benefits.

If your child is receiving public benefits, you have the option to be the representative payee to manage those funds. For more information, visit <http://www.ssa.gov/payee>.

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Do I need a conservatorship?

What are the alternatives?



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Alternatives to Conservatorship

But does the individual have capacity to execute? And if so, is there the possibility of him/her revoking the document later?

- Will or Trust
- Advanced Health Care Directive
 - Power of Attorney
 - Release of Information
 - Supported Decision Making

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Medi-Cal Authorized Representative

Representative may act for an individual on all duties related to eligibility and enrollment

Representative authorized to complete and sign application or redetermination forms, report changes, choose a health plan, help with appeals

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Standard of Proof

Probate Code §1801(a)

A conservator of the person may be appointed for a person who is unable to provide properly for his or her personal needs for physical health, food, clothing, or shelter.

Probate Code §1801(b)

A conservator of the estate may be appointed for a person who is substantially unable to manage his or her own financial resources or resist fraud or undue influence.

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Powers under a general conservatorship of the person

“Care, custody, and control of, and has charge of the education of, the conservatee”

Rights retained by conservatee are the rights to receive:

- Visitors
- Telephone calls
- Personal mail

Conservator must get specific authority to place the conservatee in a locked facility or to administer medications for care and treatment of major neurocognitive disorder (including dementia)

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What powers can I request under a limited conservatorship of the person?

Fix the residence or specific dwelling

Have access to confidential records and papers

Contract on her/his behalf and set aside contracts

Consent to medical treatment

Make decisions concerning their education

Control social and sexual contacts and relationships

Consent or withhold consent to marriage, or entrance into a registered domestic partnership

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Who acts as conservator?

Family or Friend

You can appoint co-conservators such as parents or siblings

Professional

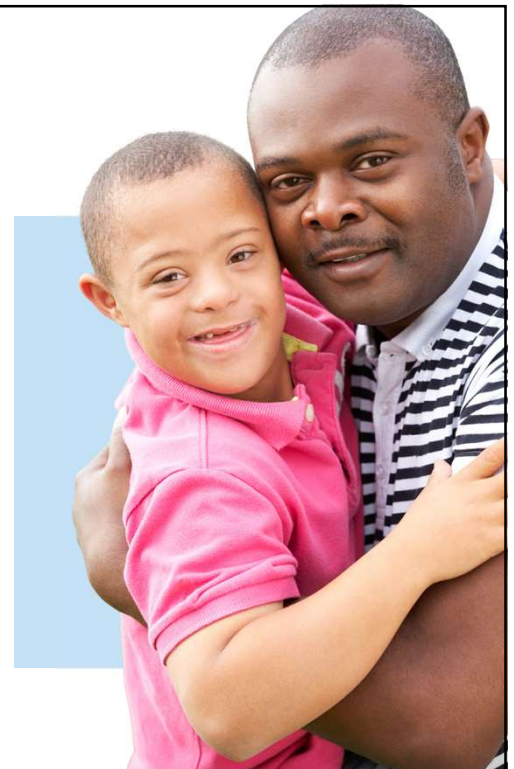
There are professional conservators if a family member is not an option



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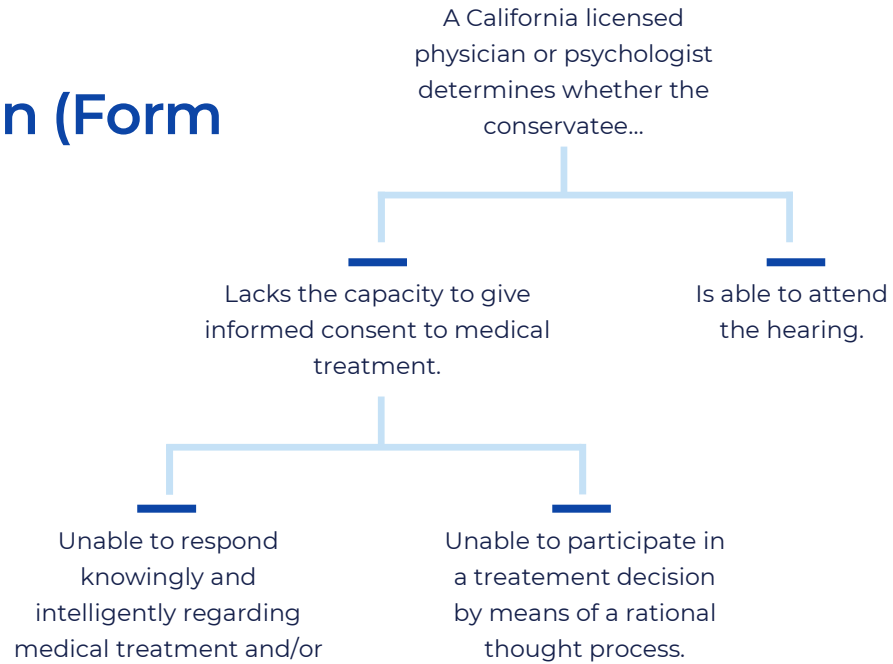
Step One

Capacity Declaration



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Capacity Declaration (Form GC-335)



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Step Two

Filing a Petition

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Filing a Petition

Where?

At the probate filing office of the county court where the proposed conservatee lives

When?

A conservatorship cannot go into effect until the 18th birthday

Cost?

\$435-\$465 filing fee unless you file a Request to Waive Court Fees and it is granted

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Fee Waiver

Form FW-001-GC – Request to Waive Court Fees

Form FW-003-GC – Order on Court Fee Waiver

If the proposed conservatee receives SSI, Medi-Cal, IHSS, SNAP, etc fees will be waived

If the proposed conservatee does not receive public benefits but qualifies as low income, the fees will be waived

Fees may not be waived if the proposed conservatee is the beneficiary of a funded special needs trust

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Petition and Accompanying Documents

1. Petition for Appointment of Probate Conservator (GC-310)
2. Confidential Supplemental Information (GC-312)
3. Confidential Conservator Screening Form (GC-314)
4. Duties of Conservator and Acknowledgment of Receipt of Handbook for Conservators (GC-348)
<http://www.courts.ca.gov/documents/handbook.pdf>
5. Citation for Conservatorship (GC-320)
6. Notice of Hearing (GC-020) and attachment (GC-020-MA)
7. Capacity Declaration (GC-335)
8. Order Appointing Probate Conservator (GC-340)
9. Letters of Conservatorship (GC-350)

All documents are called Judicial Council Forms and can be found at: <http://www.courts.ca.gov/forms>

Check with your local court to make sure they do not have any required local forms in addition to the judicial council forms

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Conservatorship Video

With Heart: Understanding Conservatorship

Many counties have a local form the conservator must sign stating they have watched the video

San Francisco shows the video before the hearing begins

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Step Three

Notice of Hearing

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Notice of Hearing

Regional Center
(if limited
conservatorship)

Send Notice of Hearing

Public Defender's
Office if they are
usually appointed

Proof of Service must be
filed with the court

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Step Four

Citation



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Serving the Citation

The proposed conservatee must be personally served with the Citation and a copy of the petition no later than 15 days prior to the hearing

Personal service: It cannot be mailed. It must be personally handed to the proposed conservatee.

The person serving must be 18 or over and not a party to the proceeding

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Step Five

Attorney

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The Proposed Conservatee's Attorney

In a limited conservatorship, all proposed conservatees are appointed an attorney by the court. The attorney is either a Public Defender or private counsel depending on the county.

In a general conservatorship, the court will appoint an attorney if the individual requests it, if dementia powers are requested, or if the court thinks it is necessary

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Step Six

Regional Center

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Regional Center

The proposed conservatee is required to be assessed by the Regional Center within 30 days of the filing of the petition

The Regional Center is required to submit a report to the court prior to the hearing

The report will state the Regional Center's recommendation concerning each of the powers requested by the proposed conservator

Probate Code §1827.5

The findings and recommendations of the regional center are not binding upon the court.

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Step Seven

Court Investigator



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The Court Investigator Does the Following

Interviews the proposed conservatee and conservator

Interviews other people involved with the proposed conservatee's daily life (family members, day program or school staff, residential staff, etc.)

Interviews the Regional Center case worker (limited conservatorship)

Runs a background check on the proposed conservator

Files a report with the court detailing her/his findings

Court Investigator fees are \$500-850 but will be waived if you have filed a Request to Waive Court Fees and it was granted.

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Step Eight

The Hearing



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What happens at a hearing?

The proposed conservatee, the proposed conservator,
and the attorneys all appear

The judge may ask some questions and check in with
the proposed conservatee

Assuming all is in order, the judge will sign the order

The court will file the Order Appointing Conservator and
then issue Letters of Conservatorship

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Letters of Conservatorship

This document serves as evidence of the conservator's authority to act on the conservatee's behalf

The powers outlined in the Letters must match those outlined in the Order signed by the judge

Get a certified copy for your clients

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After the Hearing



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Documents that Must be Filed after the Hearing

Notice of Conservatee's Rights

Must be mailed in 30 days to:

- Conservatee
- Conservatee's attorney
- Parents
- Siblings
- Grandparents

Proof of mailing must be filed with the court (Form GC-341)

Determination of Appropriate Level of Care

Must be filed within 60 days (Form GC-355)

General Plan

Most counties have their own form which must be filed within 90 days

(Local form)

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Conservatorship Maintenance

A limited conservatorship lasts for the lifetime of the conservator in a limited conservatorship and the lifetime of the conservatee in a general conservatorship

The court will terminate the conservatorship if they find that it is no longer necessary

Court reviews – After the first year and every 2 years thereafter

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Thanks! Questions?

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