

California Conservatorship: Reasons & Benefits

When an adult cannot care for themselves and/or manage their own finances, a court can appoint another person to take protective responsibility. This creates a "court ordered conservatorship" (also called a "probate conservatorship") between the protected person (the conservatee) and the responsible person (the conservator).

A conservatorship is a formal, legal authorization for the conservator - usually a spouse or domestic partner, family member, close friend, or hired professional - to make decisions for the benefit of the protected person. It restricts the conservatee's powers over their personal care and/or financial decisions. It is particularly useful when the protected person is mentally or physically unable to understand and accept help, or is vulnerable to persons who might take financial advantage of them. In that situation, with the appropriate court order, a conservatorship can prevent a vulnerable person from marrying, contracting with, or conveying property to someone else without the approval of the conservator and in some situations, the court.

Types & Benefits of Conservatorship

1. Conservatorship of the Person

A court will order a conservatorship of the person for someone whose health is at risk because they can't provide for their own food, shelter, and other basic needs. The benefits of this conservatorship are providing a way for you to assist a loved one whose health is at risk but who refuses help. Additionally, the conservator can obtain medical information and communicate with health care providers to make sure your loved one receives the best medical care. This is particularly helpful if your loved one is in a nursing home or assisted living home, or needs continuous monitoring of a serious health condition.

The conservator has the legal authority to make basic personal and health-care decisions for the protected person. The conservator must act responsibly and file regular reports with the court. If you consider a conservatorship but due to distance or other factors you cannot personally assume this responsibility, the court can appoint a professional conservator whose fees (which are usually high) must be paid from your loved one's assets, unless a friend or relative wants to pay them.

2. Conservatorship of the Estate

A conservatorship of the estate is ordered to protect the finances of someone who can't competently handle their own debts and income, or who can't resist unfair financial pressure from others. It is also used to permit Medi-Cal eligibility planning to help preserve the assets of a person who has entered a nursing home and is too ill to understand and consent to a Medi-Cal planning power of attorney.

A conservatorship of the estate can provide a way for you, as a family member or close friend, to help a loved one who is rapidly losing assets or piling up bills because they are unable to manage their money, or because they are being taken advantage of financially. The conservator has legal authority to make good financial decisions for the protected

person and to sign checks and other financial documents. The conservator must act responsibly and file regular reports with the court. The benefits of a conservatorship of the estate must be weighed against the cost, which can become expensive due to court hearings, filing of regular reports, and other related tasks.

3. Conservatorship of the Person and Estate

A conservatorship of the person and estate may be ordered by a court to protect both the health and finances of an adult who cannot care for himself or herself. There can be a separate conservator of the person and a financial conservator, or a single responsible person can be the conservator of both.

4. Limited Conservatorship for Developmentally Disabled Adult

A limited conservatorship authorizes the conservator to be responsible for part of a developmentally disabled adult's life and finances, as specified by the court. The disabled person will retain all of their other rights, and the conservator is legally required to get treatment, services, and opportunities to help the disabled person become as independent as possible.

5. Lanterman Petris Short (LPS) Conservatorship for Serious Mental Disorders

An "LPS conservatorship" is ordered by the court under the California Welfare and Institutions Code (instead of under the Probate Code, as are the other examples above). An LPS conservatorship is for a person who is seriously disabled by a mental disorder or chronic alcoholism, and who may need to be placed in a locked facility. These conservatorships have very different rules, which are not covered on this website.

Legal Documents and Court Hearing for Conservatorship

1. Prepare and File Petition for Conservatorship

An attorney must prepare a Petition for Conservatorship (a legal document) and file it with the Probate Department of the Superior Court of California. The petition with its attached legal documents asks the court to appoint a specific person to be the conservator of a person and offers proof that:

- a. The proposed conservator meets the legal requirements and can competently manage the conservatee's affairs.
- b. A surety agency has agreed to issue a bond for the conservator;
- c. The proposed conservatee is "unable to provide properly for his or her personal needs for physical, health, food, clothing, or shelter" (for a conservatorship of the person) or is "substantially unable to manage his or her own financial resources or resist fraud or undue influence" (for conservatorship of the estate). Supporting evidence must be provided to prove either or both of these things; just saying them is not enough.
- d. All legal alternatives to the conservatorship are unsuitable or unavailable.

2. Request Temporary Conservatorship If Needed

Where needed to protect the proposed conservatee's health or assets, the attorney can prepare and file a request for a temporary conservatorship until the hearing date for the Petition for Conservatorship.

3. Serve Legal Notice

The attorney for the proposed conservator must serve notice of the hearing on any other proposed conservator, the proposed conservatee, the spouse or registered domestic partner of the proposed conservatee, and interested parties (such as family members) who have requested "special notice." If the conservatee will not be physically or mentally able to attend the hearing on the Petition, a physician's declaration must be obtained to prove this.

4. Wait for Court Investigation

Everyone must then wait for the court-appointed investigator to interview the proposed conservatee and report back to the court.

5. Attend Court Hearing

About 60 days after the petition is filed, the proposed conservator, proposed conservatee, and other interested persons must attend the public hearing. If several persons have filed petitions to become the conservator, the court will apply legal rules of preference to select between them.

If the conservatee opposes the conservatorship, he or she has the right to appear at the hearing and explain why, to request the court to appoint an attorney (which the proposed conservatee must pay for), and to request a jury trial. If the court appoints an attorney for the conservatee and/or orders a jury trial, nothing else will be decided at that time. Otherwise, the court will either deny the conservatorship or will grant it and specify exactly what powers the conservator will have.

6. Appeal Any Disputes

If the court grants a permanent conservatorship, then the conservatee and anyone else who had opposed it in court can file an appeal. Appeal documents must then be prepared and filed, and all the attorneys must usually appear to argue the legal issues, in the Court of Appeal.

Costs of Conservatorship

The initial expenses of the petition and hearing must be paid by the proposed conservator, who may request that the court approve reimbursement from the conservatee's estate. Once a conservatorship is granted, the ongoing expenses must be paid from the conservatee's assets unless a family member or other person is willing and able to pay them.

Conservatorship expenses include:

Initial legal fees related to gathering evidence, preparing the petition, attending the hearing, and handling any related disputes.

Ongoing legal fees to prepare and file regular accountings with the court and seek court approval of any major financial transaction.

Court filing fees, investigator fees, appraisal fees, and other related expenses.

Conservator's fees, typically \$50 to \$100 per hour, to properly handle or delegate all of their personal care and/or financial duties to the protected person.

All conservator's fees must be submitted to and approved by the Court before they can be paid.

Bank trust department or other professional asset manager fees for high-value estates; these fees typically run 1% to 1.4% of the asset value per year.

In some situations, a conservatorship is necessary either because the legal alternatives are unavailable or the vulnerable person needs more protection. But in many situations, less expensive legal alternatives to a conservatorship are adequate and available.

Changing Conservator; Ending the Conservatorship

The court will appoint a new conservator if the existing conservator wants to quit. The court will end the conservatorship if the conservatee dies or regains his or her abilities, or if there are no funds left to pay for the conservatorship's expenses. Unfortunately, in most California counties there is no government agency that will take over or pay for a conservatorship of a person who has used up their assets. However, there are state and federal agencies with programs providing in-home services and medical care, or nursing home care, to adults with very limited income and assets. Such programs may provide a reasonable alternative where no funds remain for a conservatorship but the impaired person still needs extensive assistance.