

Superior Court of California, County of Imperial

Probate Conservatorship of the Person

SELF-HELP OVERVIEW COURSE



Disclaimer of Attorney/Client Relationship

Acknowledgments

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Acknowledgments

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Probate Conservatorship Self-Help Program

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Introduction to Conservatorships



A Conservatorship is:

A legal arrangement where a responsible person takes care of another adult who cannot care for him/herself

The responsible person is called a **Conservator**

The adult being taken care of is called a **Conservatee**

3 Types of Conservatorship

There are three types of conservatorship of the person:

- A General Conservatorship is set up for adults who cannot care for themselves. Often elderly people, but can also be younger people who have been seriously impaired.
- A Limited Conservatorship is set up for adults with developmental disabilities.
 - Limited Conservators have less authority than General Conservators and should encourage the Conservatee's independence and growth.
- LPS Conservatorships for people with serious mental health illnesses who need restrictive living arrangements and extensive mental health treatment
 - Contact the Public Conservator or the County Department of Behavioral Health.

2 Kinds of Conservatorship

For each of the three types of general conservatorship, you may petition for conservatorship of the person and/or conservatorship of the estate.

- Conservatorship of the Person involves caring for the conservatee.
- Conservatorship of the Estate involves managing the conservatee's property and finances.

Alternatives to Conservatorship



A Conservatorship May Not Be Needed

A conservatorship may not be needed if the proposed Conservatee.

- Makes Informal personal care arrangements
- Obtains Restraining orders to protect against harassment
- Has planned in advance for incapacity by having signed:
 - An Advance Health Care Directive or Durable Power of Attorney as a possible alternative to Conservatorship of the Person.

Additional Alternatives

Alternatives to conservatorship also include:

- Appointment of a representative payee by the Social Security Administration, the Veterans Administration, and some public and private pension plans
- Management of community property by a spouse
- Petition to Authorize Medical Treatment/Petition for Healthcare Decision
- Petition to Authorize Transaction for Incompetent Spouse (on a transaction by transaction basis)

Disadvantages of Conservatorship

The conservatorship appointment process can be:

- Time consuming and complicated
- A source of stress and conflict
- Costly

Advantages of Conservatorship

Conservatorship can:

- Ensure the safety and well being of the Conservatee
- Stop or prevent abuse of the Conservatee
- Clarify the responsibilities of the Conservator and the rights of the Conservatee
- Provide stability and order for the Conservatee
- Offer court supervision and protection

Duties and Responsibilities of a Conservator of the Person



ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): TELEPHONE NO.: _____ FAX NO. (Optional): _____ E-MAIL ADDRESS (Optional): _____ ATTORNEY FOR (Name): _____		FOR COURT USE ONLY To keep other people from seeing what you entered on your form, please press the Clear This Form button at the end of the form when finished.
SUPERIOR COURT OF CALIFORNIA, COUNTY OF _____ STREET ADDRESS: _____ MAILING ADDRESS: _____ CITY AND ZIP CODE: _____ BRANCH NAME: _____		
CONSERVATORSHIP OF THE <input type="checkbox"/> PERSON <input type="checkbox"/> ESTATE OF _____ (Name): _____ CONSERVATEE		CASE NUMBER: _____
DUTIES OF CONSERVATOR and Acknowledgment of Receipt of Handbook for Conservators		

DUTIES OF CONSERVATOR

When you are appointed by the court as a conservator, you become responsible to the court and assume certain duties and obligations. All of your actions as conservator are subject to review by the court. You should clearly understand the information on this form. You will find additional information in the Judicial Council's *Handbook for Conservators*, receipt of which, in addition to a copy of this form, you are required by law to acknowledge.

I. THE CONSERVATEE'S RIGHTS

Conservatees do not lose all rights or all voice in important decisions affecting their lives. All conservatees have the right to be treated with understanding and respect, the right to have their wishes considered, and the right to be well cared for by their conservators. Conservatees generally keep the right to (1) control their own wages or salary from employment, (2) make or change a will, (3) marry, (4) receive personal mail, (5) be represented by a lawyer, (6) ask a judge to change conservators, (7) ask a judge to end the conservatorship, (8) vote, unless a judge decides they are not capable of exercising this right, (9) control personal spending money if a judge has authorized an allowance, and (10) make their own medical decisions, unless a judge has taken away that right and given it exclusively to their conservators.

II. CONSULT WITH YOUR ATTORNEY

Your attorney will advise you on your duties, the limits of your authority, the conservatee's rights, your dealings with the court, all other topics discussed in this form, and many other matters. He or she will tell you when you must ask for prior court approval to take an action, when you may do so (and why it might be a good idea), and when prior court approval is not required. All legal questions should be discussed with your attorney, not the court staff, which is not permitted to give legal advice. Your attorney will also help prepare your inventories, accountings, petitions, and all other documents to be filed with the court; and will see that the persons entitled to be notified of your actions are given proper notice. He or she will also advise you about legal limits on estate investments, leases and sales of estate assets, loans, lawsuits against others involving the conservatee or his or her property, and many other matters, and can prepare or review documents needed in these matters. You should communicate frequently and cooperate fully with your attorney at all times. **When in doubt, contact your attorney.** Other questions may be answered by calling on local community resources. (To find these resources, see the *Handbook for Conservators* and the local supplement distributed by the court.)

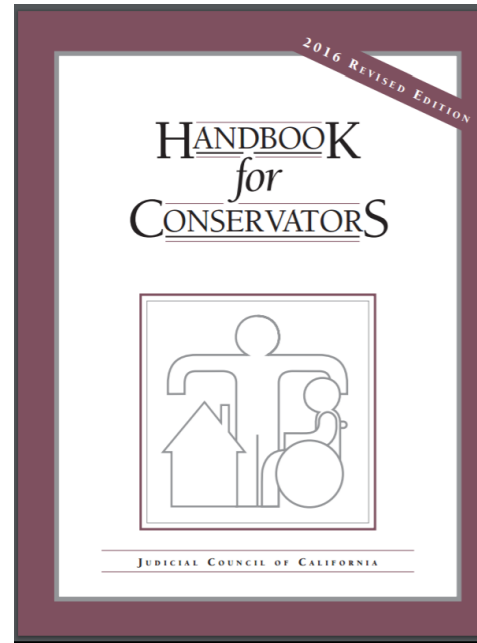
III. CONSERVATOR OF THE PERSON

If the court appoints you as conservator of the person, you are responsible for the conservatee's care and protection. You must decide, within certain limits, where the conservatee will live; and you must arrange for the conservatee's health care, meals, clothing, personal care, housekeeping, transportation, and recreation.

A. DETERMINE THE APPROPRIATE LEVEL OF CARE FOR THE CONSERVATEE

You must determine the conservatee's appropriate level of care. Your determination must be in writing, signed under penalty of perjury, must be filed with the court within 60 days of the date of the court's order appointing you as conservator, and must include:

Handbook for Conservators



The handbook can be purchased in the Clerk's Office or obtained on the California Courts Website.

A Conservator's Responsibilities Include Provision for Conservatee's

Safety and Protection,

Health and Personal Care, and

Recreational and Emotional Needs

As a Conservator You Must

Arrange for/ manage the Conservatee's:

- Living accommodations
- Meals
- Medical care
- Dental care
- Clothing
- Personal care
- Housekeeping
- Transportation
- Recreation
- Vacations
- Special needs
- Budget by working with the Conservator of the Estate

As a Conservator, You Must Also

Respect and uphold the rights retained by the Conservatee, including the Conservatee's right to:

- Ask the judge to change conservators or end the conservatorship
- Receive personal mail
- Be represented by an attorney
- Directly control wages
- Make or change a will
- Provide necessities for him/herself and his or her minor children
- Control personal spending money authorized by the judge
- Marry, vote, and make his or her own medical decisions, unless the court orders otherwise

Where Should the Conservatee Live?

Least Restrictive Living Arrangement: The type of residence that will allow the Conservatee the most independence.



Different Levels of Care

Independent Living

Home Care

Retirement Community

Assisted Living

Board and Care

Dementia Care

Intermediate Care

Skilled Nursing

A General Conservator Must Petition the Court for Decision Making Powers:

- When the Conservatee has an Advance Health Care Directive or a Health Care Power of Attorney, the person designated in the instrument to make health care decisions for the Conservatee will retain that power after a Conservator is appointed.
- You must respect the wishes of the Conservatee expressed in these instruments.
- However, you may ask the court to terminate such powers to avoid conflicts.

A General Conservator Must Petition the Court for Decision Making Powers -Continued

A General Conservator must petition the court for the following powers:

- Exclusive power to make medical decisions
- Dementia powers, including the power to place the Conservatee in a locked facility and consent to the administration of psychotropic drugs to treat dementia
- Authority to arrange for medical treatment to which the Conservatee objects

A Limited Conservator Must Petition the Court for Additional Decision Making Powers

A Limited Conservator must petition the court for the power to:

- Fix the Conservatee's residence
- Access the Conservatee's confidential records
- Give or withhold consent for the Conservatee to marry
- Control the Conservatee's right to enter into contracts
- Give or withhold medical consent on the Conservatee's behalf
- Restrict the Conservatee's social relationships and sexual contacts
- Make all decisions concerning the Conservatee's education

In Emergency Situations:

- The Conservator may *not* be required to seek the Conservatee's consent or the court's approval to make medical decisions for the Conservatee in emergency situations.
- The Conservator must act in good faith and based on medical advice.
- The treatment must be required to alleviate the Conservatee's severe pain or to address the Conservatee's medical condition that, if not immediately diagnosed and treated, will lead to serious disability or death.

The Conservator Must Always Seek Court Permission to:

Even when a Conservator has decision making authority, he or she must seek court permission to:

- Move the Conservatee to another State
- Place the Conservatee in a secured (locked) facility
- Isolate the Conservatee from specific persons (for good cause)
- Expend estate funds without the approval of the Conservator of the Estate
- Approve sterilization for the Conservatee
- Authorize the use of certain treatments (e.g., psychotropic drugs for the treatment of dementia, experimental drugs, or electroshock therapy)
- Place the Conservatee in a mental health treatment facility and/or administer mental health treatment against his or her will
- Remove the Conservatee from life support, except in accord with the Conservatee's previously expressed intent

Are You Ready to Become a Conservator?



Questions Should You Ask Yourself

What effect will the conservatorship have on you and your family?

Do you have enough time and resources to be a Conservator?

Will you be able to meet your responsibilities as a Conservator?

Can you fulfill your duties to the court?

Initiating the Conservatorship Appointment Process



Legal Representation is Not Required

Representation by a lawyer is not required to file for conservatorship, but may be desirable

- You can seek assistance from the court's self-help center or other free legal services in your community
- Even if you decide to proceed pro per (self-represented), you may want to consult a lawyer before you make any major decisions affecting the Conservatee's quality of life

Starting the Process

An agency, relative, or non-relative may file a petition for appointment of a conservator. There can be more than one conservator

The petitioner must file the required forms with the Clerk's Office

- For a list of the forms that must be filed, refer to the next slide or the Probate Conservatorship Notebook
- For an electronic fillable version of the forms, visit www.courts.ca.gov

The petitioner will also need to pay the filing fee or file an application for a Fee Waiver (Form FW-001)

- A copy of the court's fee schedule is available on our court website.

Temporary Conservatorships in Emergency Situations



A Temporary Conservatorship is Appropriate in an Emergency

You may file for a temporary conservatorship in an emergency situation, i.e.:

- there is an urgent need for the appointment of a Temporary Conservator
- there is no appropriate alternative to the temporary conservatorship.
- Notice requirements are different. Refer to your handbook
- A temporary conservatorship expires at the hearing for permanent orders
- Temporary conservatorships are not an alternative to a permanent conservatorship.

Providing Notice of a Probate Conservatorship Hearing



You *MUST* follow the notice rules carefully, otherwise the conservator appointment hearing will not be heard on the date you plan, but instead continued to a later date!



Notice

You must inform the proposed Conservatee, the proposed Conservatee's family, and certain agencies that have the right to be formally noticed you have filed a petition for conservatorship.

The law establishes who must give notice and to whom it must be given.

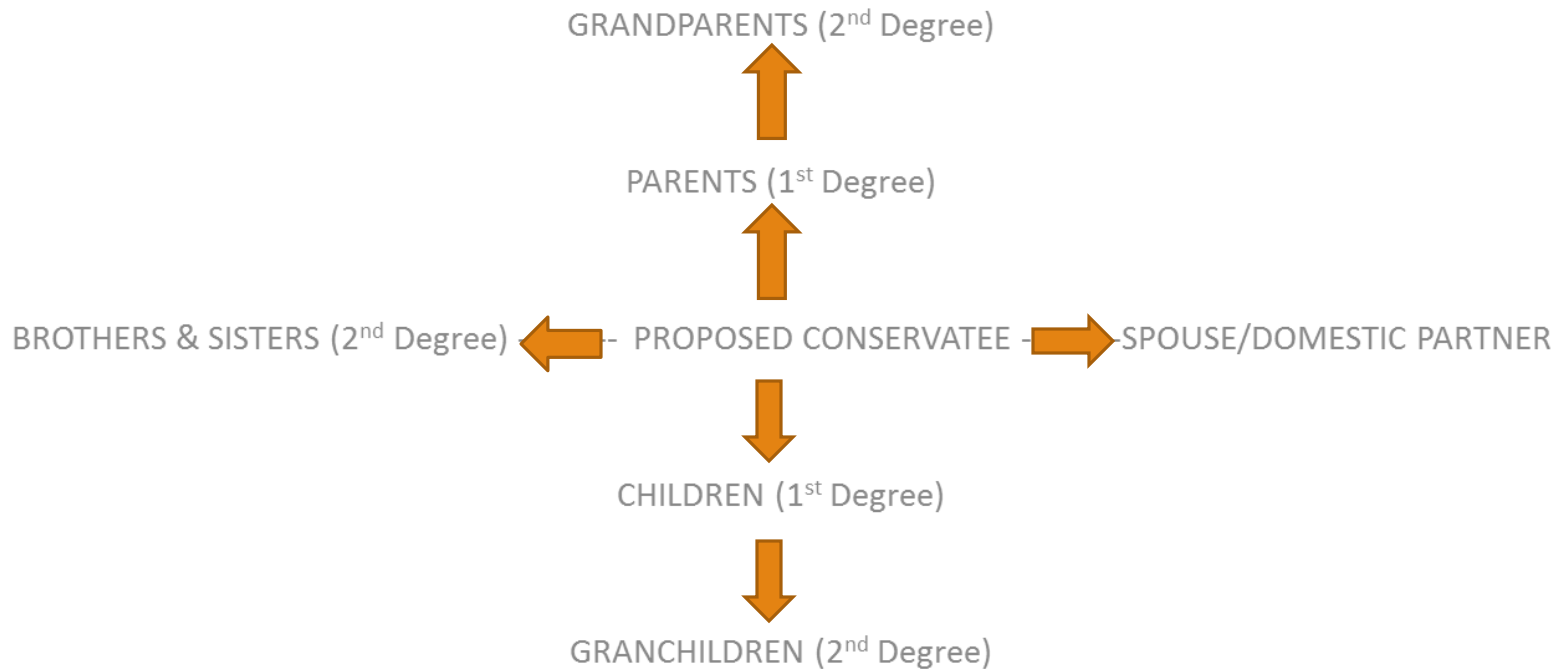
Proper Notice is Given When:

Someone – *Not You* – who is at least 18 years old (called a server), gives copies of your court forms to the necessary parties

There are two ways the server can provide notice:

- Personal Service – Proposed Conservatee Only
- Service by Mail – All Others

First and Second Degree Relatives



Notice to Proposed Conservatee:

The server must personally serve the proposed Conservatee.

- At least 15 days before the hearing, the server must personally hand the following to the proposed Conservatee:
 - Petition for Appointment of Probate Conservator (GC-310)
 - Citation for Conservatorship (GC- 320)
- The server must also complete the Proof of Service (GC- 320).

The Proof of Service must be filed with the court as soon as possible.

Notice to Other Interested Persons

Other interested persons, including the proposed Conservatee's family through the second degree*, may be served by mail.

- At least 15 days before the hearing, the server must mail the following:
 - Notice of Hearing (GC-020)
 - ❖ The server must also complete the Proof of Service (GC-020).
 - Petition for Appointment of Probate Conservator (GC-310)

The proposed Conservator must file the Proof of Service and the original Notice of Hearing with the court.

If after a diligent search you are unable to find an individual to give them notice, file a Declaration RE: Diligent Search with the court to dispense with notice.

Agencies May be Entitled to Notice

You may also need to give notice to one of the following agencies:

Regional Center or Director of Developmental Services

- If the proposed Conservatee is developmentally disabled, your server should provide notice by mail 30 days before the hearing

Director of State Hospitals

- If the proposed Conservatee is a patient in or on leave from a state hospital, your server should provide notice by mail 15 days before the hearing

Veterans Administration

- If the proposed Conservatee receives or is entitled to receive benefits from the VA, your server should provide notice by mail 15 days before the hearing

Agencies

You can find information about these agencies at:

1. Regional Center: www.sdrc.org
2. Director of Developmental Disabilities: www.dds.ca.gov
3. Director of State Hospitals: www.dsh.ca.gov
4. Veterans Administration: www.va.gov

Before the Conservatorship Appointment Hearing



The Court Investigation

- The Court Investigator will conduct an investigation to determine the suitability of the proposed Conservator.
- This investigation occurs after the conservatorship petition is filed and before the hearing is held.
- The Court Investigator will produce a written report for the court.
- You must cooperate with the Court Investigator to ensure that he or she receives the requested information.



The Court Investigation Fee

The conservatorship appointment investigation fee must be paid by the Conservatee or, if a Conservator of the estate is appointed, by the Conservator of the estate using the Conservatee's funds. The Court may waive the fee if the Conservatee receives Medi-Cal benefits.

- **The Court Investigator will talk to the Conservatee and may contact the proposed Conservator, the Conservatee's relatives of the first degree, and possibly others.**

A Regional Center Report is Required When:

When a petition for limited conservatorship is filed for a developmentally disabled adult, the Regional Center must assess the case and file a report with the court before the hearing, even if the proposed Conservatee is not a current client.

Therefore, it is important that you provide notice to the Regional Center when you file a conservatorship case for a developmentally disabled adult.

Mandatory Conservatorship Class

Probate Code section 1457 requires all proposed Conservators to complete this course before their hearings.

When you have completed this course, the declaration of completion with an attached a copy of your certificate will be used to verify that you completed the course.

If it is completed today, we will file the declaration with the court before your hearing.

Court Appointed Counsel for the Proposed Conservatee

Generally, the court may choose to appoint counsel for the proposed Conservatee when it would be beneficial to her or him.

Appointment of counsel is required in some circumstances, such as when the proposed Conservator requests dementia powers or a limited conservatorship.

Court appointed counsel will only represent the *Conservatee* and his or her best interests!

The Conservatorship Appointment Hearing



To Prepare for the Hearing You Should

Review the Probate Examiner's Notes for your case, which will be available on our court website, www.imperial.courts.ca.gov, the Wednesday before your hearing.

Correct any deficiencies with your petition before the hearing

If necessary, call the Examiner at 760-482-2238

For the Hearing, You Should Also

Review your forms and bring copies with you to the hearing, including:

- Proofs of Service (GC-320, GC-020)
- Order Appointing Conservator (GC-340)

Plan to attend the hearing with the Conservatee, unless the Conservatee is excused by the court.

What to Expect at the Hearing

You, the proposed Conservatee, and any family or friends of the proposed Conservatee will stand at the table before the judge.

All parties will be given a chance to address the judge, including those who would like to object to the appointment of the proposed Conservator.

The judge will typically make a decision regarding the petition at the end of the hearing.

If the judge decides to appoint you as Conservator, he or she will sign the Order Appointing Conservator (GC-340).

After the Conservatorship Appointment Hearing



After You are Appointed

Serve the following forms by mail on the Conservatee, the Conservatee's attorney, and the Conservatee's family through the second degree :

- Notice of Conservatee's Rights (GC-341)
- Determination of Conservatee's Appropriate Level of Care (GC-355)

File the two forms above with the court within 60 days after appointment

If you fail to file the above documents attend the Review Hearing to explain why you failed to file these documents.

Form GC-341

GC-341

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): TELEPHONE NO.: _____ FAX NO. (Optional): _____ E-MAIL ADDRESS (Optional): _____ ATTORNEY FOR (Name): _____		<div style="border: 2px solid red; padding: 5px; color: red; font-weight: bold;"> To keep other people from seeing what you entered on your form, please press the Clear This Form button at the end of the form when finished. </div>
SUPERIOR COURT OF CALIFORNIA, COUNTY OF _____ STREET ADDRESS: _____ MAILING ADDRESS: _____ CITY AND ZIP CODE: _____ BRANCH NAME: _____		
CONSERVATORSHIP OF THE <input type="checkbox"/> PERSON <input type="checkbox"/> ESTATE OF (Name): _____ <div style="text-align: right;">CONSERVATEE</div>		
NOTICE OF CONSERVATEE'S RIGHTS		CASE NUMBER: _____

When a person becomes a conservatee, he or she does not necessarily lose the right to take part in important decisions affecting his or her property and way of life. Every conservatee has the right to be treated with understanding and respect and to have his or her wishes considered. Every conservatee has all basic human rights and the right to be well cared for by his or her conservator.

The conservatee has the right to ask questions and to express concerns and complaints about the conservatorship and the actions of his or her conservator. The conservatee may ask the court to review the conservator's management of the conservatorship if disputes cannot be worked out between them. Even if the conservatee does not take direct action, the court will periodically send a person, called a court investigator, to visit the conservatee, to inquire about his or her circumstances and desires, and to advise the conservatee of his or her rights. The court also may appoint a lawyer to represent the conservatee.

The conservatee will be allowed the greatest degree of freedom and privacy possible consistent with the underlying reasons for the conservatorship. The conservator should give as much regard to the wishes of the conservatee as possible under the circumstances so that the conservatee may function at the highest level his or her ability permits. The conservator must give due regard to the preferences of the conservatee and to encourage the conservatee's participation in decision-making.

THE CONSERVATEE'S RIGHTS

After appointment of a conservator, the conservatee keeps the right to:

- Be represented by a lawyer;
- Ask a judge to replace the conservator;
- Ask a judge to end the conservatorship;
- Make or change his or her will;
- Directly receive and control his or her salary; and
- Control an allowance (an allowance is personal spending money the court has authorized the conservator to pay directly to the conservatee).

(Conservatee's rights continued on next page)

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Form GC-355

GC-355

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): TELEPHONE NO.: _____ FAX NO. (Optional): _____ E-MAIL ADDRESS (Optional): _____ ATTORNEY FOR (Name): _____	<p style="text-align: center;">FOR COURT USE ONLY</p> <div style="border: 2px solid red; padding: 5px; text-align: center; color: red;"> <p>To keep other people from seeing what you entered on your form, please press the Clear This Form button at the end of the form when finished.</p> </div>
SUPERIOR COURT OF CALIFORNIA, COUNTY OF _____ STREET ADDRESS: _____ MAILING ADDRESS: _____ CITY AND ZIP CODE: _____ BRANCH NAME: _____	
CONSERVATORSHIP OF THE PERSON <input type="checkbox"/> AND ESTATE OF _____ (Name): _____ CONSERVATEE	CASE NUMBER: _____
<p style="text-align: center;">DETERMINATION OF CONSERVATEE'S APPROPRIATE LEVEL OF CARE</p>	

Notice to Conservator of the Person

You must prepare a written determination of the conservatee's appropriate level of care, sign it under penalty of perjury, and file it with the court within 60 days of the date of the court's order appointing you as conservator. You must use this form for that purpose. Your determination must include an evaluation of the conservatee's level of care on the date the conservatorship proceeding was started (the date the petition for the appointment of a conservator was filed with the court or, if more than one petition was filed, the date the first petition was filed), and the measures that would be necessary to keep the conservatee in his or her **personal residence**. If the conservatee was not living in that residence on the date the proceeding was started, your determination must include either a plan to return the conservatee to that residence or an explanation of the reasons why the conservatee cannot return to that residence in the foreseeable future. **This determination is in addition to, not a replacement for, any written care or placement plan the court may require. Check the court's local rules to see if a care or placement plan must also be filed.**

The conservatee's **personal residence** is the residence he or she understood or believed, or appeared to understand or believe, was his or her permanent residence on the date the conservatorship proceeding was started, whether or not he or she was living there on that date. If the conservatee could not then form or communicate an understanding or belief about his or her permanent residence, the conservatee's personal residence is the residence he or she last previously understood or appeared to understand was his or her permanent residence. (See Cal. Rules of Court, rule 7.1063.)

(Name): _____, declares as follows:

1. I am conservator of the person of the above-named conservatee. I am determining the conservatee's appropriate level of care as of (date): _____, the date of the order appointing me as conservator.
2. a. On the date stated in item 1, the conservatee was living at the following residence or facility (address and name of facility, if any):

Telephone: _____

- b. The conservatee has been living in the above residence or facility since (date): _____.

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Post-Appointment, You Must Also:

Cooperate with Post-Appointment Investigations:

- Six-month optional review at the court's discretion
- One-year mandatory review
- Reviews every two years thereafter unless the court determines more frequent reviews are needed

Obtain copies of the Letters of Conservatorship

Responsibilities Pertaining to the Conservatee's Change in Residence

The Conservator must continue to ensure Conservatee receives proper care, nutrition, grooming, social interaction, and recreation

Prior court approval is required to move Conservatee to certain types of facilities or out of State

Proper notice of the Conservatee's change of residence must be provided

Notice of the Conservatee's Change in Residence

The Conservator must inform the court, the Conservatee, the Conservatee's attorney, and the Conservatee's family members within the second degree* in the following circumstances:

Conservatee moves

- Post-move notice within 30 days of move, Form GC-080 and GC-080(MA)

Conservatee moves from his or her personal residence

- Advance notice 15 days before the move, Form GC-079 and GC-079(MA)
- Post-move notice within 30 days of the move, Form GC-080 and GC-080(MA)

Conservatee moves outside of California

- Seek court permission before moving the Conservatee out of state

Conservator moves

- File Notice of Change of Address, Form MC-040

Ending a Conservatorship



A Conservatorship of the Person Ends Upon:

Death of Conservatee

- File form Notice of Conservatee's Death GC-399 and a death certificate with the court

Court Order

- Any person may petition the court to terminate a conservatorship

Form GC-399

ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO.:		GC-399
NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.:		FOR COURT USE ONLY
E-MAIL ADDRESS: ATTORNEY FOR (name):		
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:		
CONSERVATORSHIP OF THE <input type="checkbox"/> PERSON <input type="checkbox"/> ESTATE OF (name): CONSERVATEE		
NOTICE OF THE CONSERVATEE'S DEATH		CASE NUMBER:

TO ALL PERSONS INTERESTED IN THIS CONSERVATORSHIP:

PLEASE TAKE NOTICE that the above-named conservatee died on (date): _____ .

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: _____

(TYPE OR PRINT NAME OF CONSERVATOR OF THE PERSON)

(SIGNATURE OF CONSERVATOR OF THE PERSON)

Terminating a Conservator

A Conservator's status as Conservator will be terminated if the Conservator:

- Dies
- Resigns
- Is removed by order of the court due to lack of capacity or for failing to act in the best interest of the Conservatee

Grounds for Removing a Conservator

A Conservator may be removed for any of the following reasons:

- Negligence
- Failure or inability to perform duties
- Felony conviction
- Abuse
- Conflict of interest
- Abandonment of Conservatee
- The court may also remove a Conservator if it would be in the best interest of the Conservatee.

Questions?

