

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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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 Health Care 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

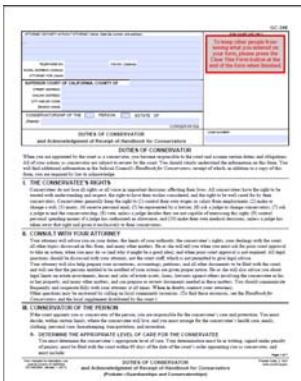
Conservatorship can:

- 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



Form GC-348



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	Board and Care
Home Care	Dementia Care
Retirement Community	Intermediate Care
Assisted Living	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 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 the court provide a training for non-professional conservators

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.

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

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?