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**California Conservatorship Proceedings**

**A. What is a Conservatorship?**

1. A conservatorship is a court proceeding to appoint a manager for the financial affairs or the personal care of one who is either physically or mentally unable to handle either or both of these issues. [Probate Code § 1801].

2. A conservator of the person or of the estate, or both, maybe appointed for an adult. [Probate Code § 1800.3].

**B. What are the effects of establishing a Conservatorship?**

1. The establishment of a conservatorship has two effects:

- a) It shifts the responsibility for making financial and/or personal care decisions from the conservatee to the conservator; and
- b) It imposes significant limitations on the conservatee's ability to take actions affecting finances and/or personal care.

2. Conservatorship are a valuable method of solving problems that arise when persons become unable to care for themselves or their affairs.

3. Problems?

- a) Conservatorship can have a possible negative psychological impact on the proposed conservatee.
- b) A conservatorship can be quite restrictive.
- c) Conservatorship can be expensive to set up and operate.

**C. Types of Conservatorship in California.**

1. There are three basic types of conservatorship proceeding in California.

- a) Probate Conservatorship;
- b) Limited Conservatorship; and
- c) LPS Conservatorship.

**D. Probate Conservatorship.**

1. Probate Conservatorship are established in the Probate Court, which is a division of the Superior Court sitting as a Probate Court.

2. Who can be a Conservator?

- a) Any adult can be a conservator of the person and estate;
- b) A trust company or a trust department of a bank, stock brokerage firm, etc can be a conservator of the estate if they are authorized by the State of California to conduct business in California; or
- c) The Public Guardian of the County where the conservatorship is established can be the conservator of the person and/or estate. The Public Guardian is usually a department within the county government in most counties in California.
- d) More than one individual can be appointed as conservator of the person and/or estate.

3. Probate conservator of the person.

- a) If an individual is unable to manage his or her personal matters, health, food, clothing and shelter, a conservator of the person can be appointed for them, regardless of their physical and mental condition.
- b) A trust department can not act as a conservator of the person. [Probate Code § 300].
- c) Conservator of the person becomes responsible for determining where the Conservatee resides, providing food, clothing and shelter for the conservatee.
- d) Conservator of person can be granted the power to make medical decisions on behalf of the conservatee if the court determines that there is no form of medical treatment for which the conservatee has capacity to give informed consent for. Requires a medical declaration signed by a physician. [Probate Code § 2355].
- e) Court can grant powers to conservator of the person regarding dementia treatment or placement, including administering dementia related drugs.

4. Probate Conservator of the estate.

- a) Is responsible for collecting assets of conservatee, preserving assets, paying bills of Conservatee, collecting income of conservatee.
- b) May be required to post bond for the value of personal property of the estimated annual income from real and personal property.
- c) Must put together and file with court an Inventory of the assets of the estate.
- d) Keep records of income collected and expenses paid so can do accountings

- e) to court. Account after first year, and then every two years thereafter.
- f) Can sell property of the estate with court approval.
- g) Keep assets of estate separate from conservator's own assets.
- h) Fees for conservator and their attorneys are subject to court approval.
- Conservator has a fiduciary duty to conservatee. Must make prudent investments.

5. Appointed as conservator by filing petition with probate court. Normally set for hearing four to six weeks after filed with court.

- a) Can be appointed as temporary conservator of the person and/or estate for the interim period. Usually done ex parte after five days notice of hearing.

6. Conservatee can object to petition for appointment of conservator and the court will appoint an attorney for the conservatee if he or she does not have one.

- a) A court official called a probate investigator visits proposed conservatee and advises them of their rights.

#### E. **Limited Conservatorship.**

1. Limited conservatorships are designed for conservatees that have been classified as developmentally disabled by the Regional Center during the period they were a minor.

- a) Disability that originates before age 18 continues, or can be expected to continue, indefinitely, and constitutes a substantial handicap for such individual. [Probate Code § 1420].
- b) Regional Center is a department of a county's government. It must file a report with the court setting forth its recommendations regarding the powers which the proposed limited conservator seeks to have taken from the proposed limited conservatee. So the petition must be specific as to powers sought by proposed limited conservator.

2. Done through the Probate Court.

3. Designed to serve two purposes:

- a) It provides protective proceedings for those individuals whose developmental disability impairs their ability to care for themselves or their property in a manner not requiring the rigidity of a probate conservatorship.
- b) It encourages the maximum self-reliance and independence of the limited conservatee by divesting him or her of rights and granting the limited conservator powers, for only those activities in which the limited conservatee is unable to engage capably. [Probate Code § 1801].
- c) The purpose then is for the limited conservatee to receive services and have a more independent, productive, and "normal" life.

4. **Mandatory Court appointed attorney for proposed limited conservatee.**

5. **Limited conservator has duty to treatment, training, education, medical and psychological services, and social and vocational opportunities as are appropriate and will assist the conservatee in developing self reliance and independence.**

6. **Like a general conservator, a limited conservator has the care, custody and control of the limited conservatee except that, unless specifically requested in the petition and granted in the court's order, a limited conservator does not have any of the following powers or controls:**

1. **To determine the limited conservatee's place of residence;**
2. **To have access to the limited conservatee's confidential records;**
3. **To control the limited conservatee's right to marry;**
4. **To control the limited conservatee's right to contract;**
5. **To give consent for the limited conservatee's medical treatment;**
6. **To control the limited conservatee's social and sexual contacts and relations;**
7. **To make decisions concerning the limited conservatee's education.**

#### **F. LPS Conservatorship**

1. **LPS stands for Lanterman-Petris-Short Act.**

2. **Mental health conservatorship done through mental health court which is a division of the superior court.**

3. **LPS is usually proceeded by short detention at psychiatric facility.**

- a) **Normally a person is picked up by the police taken to a psychiatric hospital and held for 72 hours under Welfare and Institutions Code § 5150.**
- b) **At the end of the 72 hours the staff of the facility may certify under Welfare and Institutions Code § 5250 to involuntarily hold the person for up to 14 days more.**

4. **At the end of this 14 day period if the facility seeks to continue to hold the person involuntarily an LPS proceeding must be filed in the Mental Health Division of the Superior Court.**

- a) **Only the Public Guardian may this LPS proceeding and it usually begins with a temporary LPS petition.**
- b) **The court will appoint an attorney for the conservatee, usually the Public Defender, though private counsel can be appointed by the court.**
- c) **Either the Public Guardian or a private individual can be appointed as LPS conservator of the person and/or estate.**
- d) **LPS conservatorship terminates every year and a petition must be filed to**

reappoint the conservator(s) if necessary.

5. To qualify for an LPS conservatorship you must be classified as "gravely disabled".
  - a) "Gravely Disabled" - is a condition in which a person, as a result of a mental disorder [or impairment by chronic alcoholism], is unable to provide for his or her basic personal needs for food, clothing or shelter. [Welfare and Institutions Code § 5008(h)(1)].
  - b) Basically means that the person must be suicidal, homicidal, or totally unable to care for themselves.
  
6. LPS conservator of estate must file Inventory and file accounting at the end of the year.