

# Probate Conservatorship

Probate Code Sections 1400 et seq.

## **WHAT IS PROBATE CONSERVATORSHIP?**

Probate Conservatorship is when a judge appoints someone to decide where you live or what to do with your property. Someone who has legal authority to decide where you live is called a “conservator of the person.” Someone who has legal authority to decide what to do with your property is called a “conservator of the estate.”

## **WHERE AM I SUPPOSED TO LIVE IF PUT ON PROBATE CONSERVATORSHIP?**

- You have a right to live in the most integrated setting appropriate to your needs.
- Your conservator has a duty to ensure that you live in the least restrictive placement possible.
- A probate conservator cannot place you in a locked psychiatric facility.

## **WHEN WOULD I BE PUT ON PROBATE CONSERVATORSHIP?**

A conservator of the person may be appointed for an adult who is unable to provide

for physical health needs, food, clothing or shelter. A conservator of the estate may be appointed for an adult who is substantially unable to manage their own financial resources or resist fraud or undue influence. People with developmental disabilities may be put on a “Limited Probate Conservatorship,” discussed further below.

## **WHO MAY SUBMIT A PETITION?**

The following people may file a petition for Probate Conservatorship:

- The proposed conservatee,
- A spouse or relative,
- Any interested public entity, or
- Any interested person or friend.

## **WHAT IS INCLUDED IN THE PETITION?**

The petition must provide a brief statement of the need for the conservatorship and must include the following:

- The name, phone number and address of the proposed conservator,

- Information on the proposed conservatee’s inability to provide for his or her needs,
- The proposed conservatee’s current residence and his or her ability to live there while under conservatorship,
- Alternatives to conservatorship considered by the petitioner,
- Health or social services provided to the proposed conservatee over the past year
- Information on the proposed conservatee’s inability to manage his or her financial resources or resist fraud, and
- Information on the proposed conservatee’s eligibility for government benefit programs, including VA benefits.

### **WHAT ARE MY RIGHTS IN THE CONSERVATORSHIP PROCESS?**

- You have a right to receive notice and a copy of the petition at least 15 days prior to a hearing.
- The notice must include information about the basis for the petition and the proposed type of conservatorship sought.
- The notice must explain how the conservatorship would affect your right to contract, to manage and control your property, to give informed consent to medical care, to decide where you live, and to vote.
- You have a right to appear at the hearing.
- You have a right to choose and be represented by an attorney and to have legal counsel appointed if you cannot obtain an attorney.
- You have a right to a jury trial.



### **WHAT DOES THE COURT INVESTIGATOR DO?**

The court investigator’s duties include the following:

- Interview the proposed conservatee personally,
- Inform the proposed conservatee of the petition, the effect of the proceeding, and the rights of the proposed conservatee,
- Determine if the proposed conservatee is willing and able to attend the hearing,
- Review the allegations of the petition,
- Determine if the proposed conservatee opposes the petition,
- Determine if the proposed conservatee objects to the proposed conservator and would prefer another conservator,
- Assess ability to vote, and
- Provide annual assessment of each conservatee

### **DO I REALLY NEED A PROBATE CONSERVATORSHIP?**

A conservatorship takes away some of your power to decide things for yourself. You should ask for other types of help before you are conserved. Here are some examples of alternatives to conservatorship:

- A trust could be set up to help you manage your money and property. You may not need a conservator of the estate.
- You agree to a conservator of the estate but disagree with the need for a conservator of the person.
- You may request and agree to the provision of support and/or health services at your home to ensure that your needs are met.
- You could designate someone to make medical treatment decisions for you.

## WHO MAY BE MY CONSERVATOR?

You may nominate whoever you would like to be your conservator. The law contains a list of preferences, beginning with family members. The judge decides who to pick. The county public guardian may be appointed if no one else is available.

## HOW LONG DOES A PROBATE CONSERVATORSHIP LAST?

A Probate Conservatorship generally lasts until terminated by order of the court or by the death of the conservatee.

## WHAT IS A TEMPORARY PROBATE CONSERVATORSHIP?

A temporary conservatorship is when a judge appoints a temporary conservator of the person and/or estate for up to 30 days. The petition must state good cause for this appointment. You have the right to receive written notice at least five (5) days before the establishment of a temporary conservatorship, unless there is an emergency. You may request a hearing to oppose it.

## WHAT IS A LIMITED CONSERVATORSHIP?

If you have a development disability, the court can create a “limited conservatorship.” This allows you to keep some rights and make some decisions about your life. You must be told which rights will be taken away. You must have the opportunity to challenge the denial of those rights. When a court is asked to create a limited conservatorship for you, your regional center must write a report about the help you need. You and your proposed conservator must receive a copy of

that report. The standard of proof is clear and convincing evidence.

## WHAT DOES A CONSERVATOR DO?

A conservator has a duty to do what the court has appointed him or her to do. This may include:

- Help you get support services, education, medical and psychological services, and other services that will help you become as independent as possible.
- A conservator of the estate also must provide periodic accountings of your property.
- The “Letters of Conservatorship” specify the responsibilities of your conservator, and the legal rights that have been taken from you.



Unless specifically authorized by the court, a conservator **cannot**:

- Decide where you live,
- Control your confidential records,
- Control your right to marry,
- Control your right to contract,
- Consent to your medical treatment, or
- Make decisions about your education

## WHAT RIGHTS DO I KEEP IF I AM PUT ON PROBATE CONSERVATORSHIP?

- You have the right to receive services so that conservatorship may not be needed.
- You have the right to be involved in treatment and placement decisions.
- You have a fundamental right of self-determination over your body.

- You have the right to give informed consent for non-routine treatment.
- A person is presumed to have capacity to provide informed consent. You may use alternative communication devices as needed.
- You have the right to make treatment decisions unless a court found you lack capacity to do so.

**HOW DOES THE JUDGE DETERMINE WHICH RIGHTS TO DENY ME?**

The judge determines what rights should be taken from you based on the facts presented concerning your capacity to exercise each specific right. For example:

- You should retain the right to vote if you understand and can assist in completing the voter registration card.
- You should retain the right to make treatment decisions regarding your psychiatric condition if you understand the benefits and risks of recommended treat-

ment and can express a preference for appropriate options.

**WHAT INVOLVEMENT SHOULD I HAVE IF THE COURT DETERMINES THAT I DO NOT HAVE CAPACITY TO MAKE TREATMENT DECISIONS?**

If a person is found to lack capacity to make treatment decisions, the conservator must provide informed consent based on the conservatee’s wishes. This means that you have a right to be involved in all treatment decisions. The conservator should consent to what you prefer unless what you prefer would not be clinically appropriate.

**WHAT CAN I DO IF I DISAGREE WITH MY CONSERVATOR?**

- You may request a court hearing if you feel that your conservator has too much power over your life or has placed you in a setting that is too restrictive.
- Contact your attorney to discuss how to proceed.

**For further information, call:**

**Disability Rights California**  
 Toll Free: 1-800-776-5746