

# Guide to Conservatorship in California



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## What is a Conservatorship?

A conservatorship is a court proceeding in which a judge appoints a responsible person or persons (the “conservator(s)”) to care for another adult (the “conservatee”) who cannot care for himself or herself or manage his or her own finances.

## When is a Conservatorship Necessary?

Conservatorships are necessary to protect adults who do not have the capacity or ability to care for themselves or their estates.

## Are there different kinds of conservatorships?

Yes. There are two types of conservatorship: **General Conservatorships**, also known as Conservatorships of both the *Person and the Estate*, and **Limited Conservatorships**, which are generally *Conservatorships of the person*. Temporary Conservatorships allow for temporary protection of a person while a general conservatorship is being pursued.

## What is a General Conservatorship?

General conservatorships are typically sought to manage the care and finances of an elder who has lost mental capacity.

General Conservatorships consist of two parts – a

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**Conservatorship of the Person**, and a **Conservatorship of the Estate**. When a Conservatorship is filed for an elder, typically both kinds are necessary, and can be filed with the court at the same time.

- **Conservatorships of the Estate** allow a conservator to manage the conservatee’s financial affairs, such as paying bills or collecting income on behalf of the conservatee.
- **Conservatorships of the Person** allow a conservator to manage the conservatee’s health and personal care, such as ensuring the conservatee has proper food and housing or making medical decisions for the conservatee.

### Limited Conservatorships

Limited Conservatorships are most often used for adults with developmental disabilities, but can be used for older adults as well. “Limited” simply refers to the fact that the court is being petitioned for *only one* kind of Conservatorship – Conservatorship of the Person, **or** Conservatorship of the Estate.

### **When is a conservatorship *not* necessary?**

- If the potential conservatee has the mental capacity to sign an Advance Healthcare Directive or Durable Power of Attorney, then a conservatorship is not necessary.

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- If the potential conservatee can adhere to a plan that meets their needs, then a conservatorship is not necessary.
- If the potential conservatee is married or in a domestic partnership in which the spouse or partner can handle financial affairs, then a conservatorship is not necessary; however, the accounts and property would have to be community property or in joint accounts.
- If the potential conservatee receives only Social Security (SSA) or welfare income, they can appoint a representative payee to receive checks on their behalf and a Conservatorship of the Estate would be unnecessary; however, a Conservatorship of the Person may still be necessary.

### **How long does a conservatorship last?**

A conservatorship will last the duration of the conservatee's life unless otherwise specified.

### **Can a conservatorship terminate prior to the conservatee's death?**

Yes. In some cases the conservatorship is established to protect a conservatee during a serious accident or illness. Once the conservatee recovers, the conservatorship can be terminated. However, these types of conservatorships are very uncommon.

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The conservatorship might also terminate prior to a conservatee's death if the conservatee's assets are gone. In this case, a Conservatorship of the Estate would no longer be necessary, but a Conservatorship of the Person would remain intact.

**What is a Temporary Conservatorship?**

A Temporary Conservatorship occurs in a situation where a conservatee has immediate needs and cannot wait for a general conservator to be appointed. Temporary Conservatorships may also be granted by the court to fill in between permanent conservatorships: for example, if a conservator is removed and a new conservator has not yet been appointed, the court could appoint a temporary conservator.

Temporary Conservatorships have specific end dates and exist for a fixed period, usually ranging from 30 to 60 days. These conservatorships can be of the estate, of the person, or both. Temporary Conservatorships include more restrictions than General or Limited Conservatorships. Without a judge's prior approval, a temporary conservator cannot move the conservatee from their home (except in emergency), sell the conservatee's home or give up the conservatee's lease if conservatee is a renter, or sell or give away an estate asset.

**Are there alternate legal routes to protect a person?**

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If protection from a specific person is desired, a restraining order can be obtained.

**Are there alternate legal routes to protect a person's bank accounts?**

The potential conservatee's bank and brokerage accounts can be managed in a jointly held account.

**Conservatorships for Adults with Developmental Disabilities or Mental Illness****What type of conservatorship is available for an adult with developmental disabilities?**

An adult with developmental disabilities can be protected through a Limited Conservatorship. Limited

Conservatorships can include either a Conservatorship of the Estate, a Conservatorship of the Person, or both.

**When is a Conservatorship of the Estate not necessary for adults with developmental disabilities?**

Under the California Probate Code, a Conservatorship **of the Estate** is unnecessary if the developmentally disabled

adult receives only government benefits, such as

Supplemental Security Income (SSI) or Social Security

(SSA), and has no other assets. A Conservatorship of the

Estate is also unnecessary if the developmentally disabled

adult earns a wage. However, if the developmentally disabled

adult has other assets, such as an inheritance or settlement

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that are not in a special needs trust, a Conservatorship of the Estate is necessary.

### **What kind of conservatorship is available for a person with a mental illness?**

Conservatorships for people with severe mental illnesses can be difficult to obtain. Lanterman-Petris-Short (LPS)

Conservatorships are designed specifically for adults with serious mental health illnesses who need special care.

Conservatees in LPS Conservatorships are usually adults who require very restrictive living arrangements (such as living in a locked facility) and/or require extensive mental health treatment (such as requiring strong drugs to control behavior). LPS Conservatorships must be started by a local government agency, and you must contact your local county Public Guardian or Public Conservator to begin the process.

However, LPS Conservatorships are not the only way to protect adults with severe mental illnesses. While it is difficult, in some instances you may be able to obtain a General Conservatorship to protect a person with severe mental illness.

### **The Conservatorship Process and Requirements**

#### **Who can start the conservatorship process?**

The proposed conservator, potential conservatee, the spouse or domestic partner, a relative or friend of the proposed conservatee, an interested person or interested state or local agency, or public officer.

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## What are the steps to obtaining a conservatorship?

**1. Petition:** You must file a Petition For Conservatorship with the court. The petition must include information about the proposed conservator, potential conservatee, relatives, and the petitioner (person filing the case in court). It must also include reasons explaining why the conservatorship is necessary and should be granted. It must also explain why the possible alternatives are not available in this case. A petition can be drafted and filed by an attorney.

**2. Inform the Conservatee:** You must inform the potential conservatee of the proposed conservatorship by delivering a citation and a copy of the petition to the potential conservatee. The citation is a court form that provides information about the proposed conservatorship.

**3. Inform the Conservatee's Relatives:** You must mail a copy of the petition along with written notice about the court hearing on the conservatorship petition to the conservatee's spouse/domestic partner and close relatives. These documents must be mailed by someone other than the petitioner.

**4. Investigation by Court Investigator:** The court requires an investigation conducted by a neutral court investigator to obtain information about the conservatorship and how it would benefit the proposed conservatee. More information

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on the role of the court investigator is listed below. (See #20.)

**5. Hearing:** The court will set a date for a hearing where a judge will ensure that all parties have been properly notified, and will also determine whether a lawyer needs to be appointed to represent the proposed conservatee. The proposed conservatee must be present at the hearing unless they are excused due to illness. If the judge feels ready to make a decision, they will either grant or deny the conservatorship. If granted, the court will file an order to appoint the conservator and will issue Letters of Conservatorship. The Letters of Conservatorship are documents detailing who the conservator and conservatee are, and can be used by the conservator to show legal authority when they make decisions on behalf of the conservatee.

### **Who can deliver the Citation to inform the proposed conservatee of the conservatorship?**

The citation must be delivered by an individual who is NOT a party in the conservatorship. This means that the proposed conservator cannot deliver the citation. A family member or professional may deliver the citation.

### **What documents must you prepare for the judge prior to the first conservatorship hearing?**



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Prior to the first hearing, you must prepare the Letters of Conservatorship, Draft Order, and the Confidential Conservator Screening Form. These documents will be given to the judge who will sign them if she decides to grant the conservatorship.

### **If the conservator is a professional fiduciary, what will the court need prior to the first hearing?**

If the conservator is a professional, you must obtain their fee declaration for the first hearing. This declaration should clearly state how much the professional conservator plans to bill for their work as conservator.

### **What documents do you need if the petitioner is not the proposed conservator?**

If the petitioner is not the proposed conservator, then the petitioner must obtain a consent form from the proposed conservator.

### **What forms are required to determine the validity of the conservatorship?**

The following three forms are required:

#### **Confidential Supplemental Information Form:**

The Confidential supplemental information form provides space to detail why the proposed conservatee is unable to care for their own personal and financial needs. It also includes alternative solutions to a conservatorship and

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requests explanation as to why the petitioner believes those alternatives are unsuitable for the proposed conservatee.

**Confidential Conservatorship Screening Form:**

The Confidential Conservatorship Screening Form must be filled out by the proposed conservator. The form includes questions about the proposed conservator's relationship to the conservatee, about the proposed conservator's criminal background, and any other relevant information.

**Duties of Conservator Form:**

This form outlines the various duties assigned to the conservator, including information on taking care of the conservatee, duties to keep records and accountings of finances, duties to disclose information to the court, and others. The proposed conservator must read and sign this form to acknowledge that they have received this information along with the Handbook for Conservators.

*All these forms should be filed together with the Petition for Conservatorship.*

**What should you do to protect money in the conservatorship estate?**

To protect money in the estate, you must have a bond prepared.

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### **Are there other ways to protect the proposed conservatee's estate?**

The court can order the conservatee's bank accounts to be frozen. In this case, a bond will not be required.

However, the Conservator would not have access to the funds, which may be necessary to provide for the care of the Conservatee.

### **How do you set a hearing date?**

The hearing date will be set upon filing the Petition.

The clerks at court will assist you in selecting a date for the hearing based on the court calendar.

### **Will a court always grant a conservatorship?**

No. A judge may deny a conservatorship petition if they feel the proposed conservatee does not need a conservatorship, or if he/she thinks the proposed conservator is not the best person to care for the conservatee. The court may also deny a conservatorship petition if there are alternate options available for caring for the potential conservatee. *Courts may be cautious in granting conservatorships as a conservatorship confers a significant amount of authority to a conservator.*

If the **court does grant** a conservatorship, the conservator must purchase the Handbook for Conservators from the court or download the book from the court website.

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**What fees are due at the time of filing the conservatorship petition?**

When you file the petition, you will need to pay the fee to file the petition with the court, as well as the court investigator fee. The fees are typically at least \$800.

**Can these fees be waived?**

Yes. A court may waive fees for financial hardship. To have a court waive fees, you must fill and submit a Fee waiver form. The form will include information about your income and assets.

**Court Investigators****What is the job of the court investigator?**

The court investigator provides a neutral, third-party assessment of the conservatorship. They will determine whether the conservatee needs an attorney assess the fee base. The court investigator will talk with the proposed conservatee and others who may be familiar with the conservatee's condition. The court will obtain fees from the conservatee's estate for the cost of this investigation unless the court determines that assessing fees from the estate would be a hardship for the conservatee.

**How long does the court investigator remain involved with the conservatorship?**

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After the conservatorship is granted, the court investigator checks in after 6 months and again after 12 months. After the first year has elapsed, the court investigator will check in annually.

### **Is a court investigator necessary in temporary conservatorships?**

Yes. A court investigator will be involved even for a temporary conservatorship.

### **Attorneys and Conservatorships**

#### **Do you need an attorney to obtain a Conservatorship?**

You do not need an attorney to obtain a conservatorship. However, obtaining a General Conservatorship without a full and complete knowledge of how the process works will severely diminish the chances of success. In addition, significant liability is created on the part of the Conservator, should they be appointed. Without the guidance of an attorney who specializes in Conservatorships, a Conservator may be at risk for legal prosecution of any wrongdoings. Hiring an attorney to assist with a Conservatorship is expensive, but it offers the following benefits:

- Ensures the conservatorship process is not delayed by procedural mistakes

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- Increases the likelihood of success by ensuring all evidence is accurately presented
- **Protects the Conservator** from taking actions that may yield legal prosecution
- Saves time and energy which may be necessary for the care of the proposed Conservatee

### **When the Proposed Conservatee or Other Family Members Object to the Conservatorship**

The points above are ways that an attorney is useful in a Conservatorship proceeding that is non-litigated. If you believe that the proposed Conservatee or other family member(s) may object to the Conservatorship, obtaining an attorney is *essential*. In this case, someone appearing in pro per (w/o an attorney) would be at a crippling disadvantage.

### **Fees and Costs of a General Conservatorship**

A Conservatorship for an elder is expensive. However, it is often acceptable to use the proposed Conservatee's funds to pay for all expenses related to the Conservatorship. Even if a Petitioner pays fees up front, they can likely be reimbursed later. There are several different costs of obtaining a Conservatorship and managing it once it has been established. These include:

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**The Petitioner’s Attorney** The Petitioner is the person who petitions the court for Conservatorship. This is often a family member but could be a friend or other interested party/organization. The cost of the attorney will vary depending on the nature of the case – for example, if an emergency conservatorship is necessary or if the conservatorship is litigated. Most attorneys require an initial retainer of \$5,000-10,000 dollars.

**The Conservatee’s Attorney** After the initial petition is filed with the court, the court will appoint an attorney for the proposed conservatee. Attorneys are chosen from a panel and all have significant experience with Conservatorships.

**Court Fees** Court fees include filing fees and the Court Investigator’s fees. These fees are typically fixed costs which your attorney can specify for you prior to filing.

### **Other Attorneys and Professionals**

**Objector’s Attorney** If one or more parties object to the Conservatorship, they will likely also have attorneys. In many cases, these fees can also be paid by the Conservatee’s Estate.

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**Professional Fiduciary** In some cases, it may be necessary or preferable to have a professional act as Conservator. Professional Fiduciaries are typically the people who fill this important position.

**Attorney for Professional Fiduciary** Fiduciaries are held to high ethical and legal standards, and thus they must have an attorney when they are acting as a Conservator, Professional Trustee, or other important position.

*Conservatorship costs can be kept reasonable* in situations which are not strongly contested.

Ongoing litigation is the main reason why attorneys' fees and other costs can escalate in a Conservatorship proceeding.

\*Fees and costs for a **Limited Conservatorship** being obtained for a developmentally disabled child are substantially lower. Because the child most often does not have money of their own, the fees of the attorney appointed on his or her behalf are paid by the county. As limited conservatorships are generally not contested and seek solely a Conservatorship of the Person, parents can attain them more easily without the help of an attorney. Delays due to procedural mistakes are likely not a significant issue in these instances.



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## Terminating or Modifying a Conservatorship

### **How does a conservatorship terminate?**

A conservatorship usually ends upon the conservatee's death. It can also terminate sooner if the conservatee regains capacity. A Conservatorship of the Estate may terminate prior to the conservatee's death if the conservatee's assets are gone. (See #6.)

### **Can a conservator be removed?**

Yes. A conservator can be removed by the court if the conservator is not upholding the required duties.

### **Can a conservator resign?**

Yes, a conservator can resign. However, they will remain conservator until all obligations to the court (requisite paperwork, final accountings, etc.) are all met.

### **What is the Bottom Line when it comes to Conservatorship?**

Conservatorships are not ideal, but in many situations, they are the only way to protect the health and well being and/or finances of an elderly individual. While costly, hiring an experienced,

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reputable Elder Law attorney to assist with the Conservatorship process puts families in the best possible position to succeed.

**What is the first step?**

You are welcome to call our office for a consultation. We assist with Conservatorship matters in Contra Costa and Alameda Counties.

