

Conservatorships

"Conservatorship" is a court created arrangement that gives one person (conservator) authority to make specific kinds of decisions on behalf of another person (conservatee). Statutes governing conservatorships are found in Division 4 of the Probate Code and Division 5 of the Welfare and Institutions Code. Conservatorships are tailored, within statutory parameters, to meet the needs of individual conservatees, but it is possible to speak in terms of four general categories of conservatorship: LPS, Temporary LPS, Probate, and 6500 conservatorships for the Intellectually Disabled

LPS Conservatorship: For Involuntary Mental Health Treatment

The purpose of conservatorship, as provided for in this article, is to provide individualized treatment, supervision, and placement. (WIC 5350) When the professional person in charge of an agency providing comprehensive evaluation or a facility providing intensive treatment determines that a person in their care is gravely disabled as a result of mental disorder and is unwilling to accept, or incapable of accepting treatment voluntarily, they may recommend conservatorship to the officer providing conservatorship investigation of the county of residence of the person prior to their admission as a patient in such facility.

The professional person in charge of an agency providing comprehensive evaluation or a facility providing intensive treatment may recommend conservatorship for a person without the person being an inpatient in such facility, if both of the following conditions are met: (a) the professional person or another professional person designated by him has examined and evaluated the person and determined that he is gravely disabled; (b) the professional person or another professional person designated by him has determined that future examination on an inpatient basis is not necessary for a determination that the person is gravely disabled.

If the officer providing conservatorship investigation (Public Guardian) concurs with the recommendation, he shall petition the superior court in the county of

residence of the patient to establish conservatorship. LPS-Conservatorship is initiated by petition. Only "professional persons" (i.e., licensed mental health professionals; but local court rules may require the petitioner to be a psychiatrist or psychologist) may petition for the creation of an LPS-conservatorship. In the petition, the "professional person" (Section 5352) asserts that she has evaluated the subject and believes he is gravely disabled due to a mental disorder. Petitions may be initiated for persons who are not receiving acute psychiatric inpatient care.

An LPS-conservatorship is time limited. It automatically expires one year from the date of creation. The LPS-conservatee has the right to return to court during the twelvemonth period to contest the fact of the conservatorship, the powers given to the conservator, and other details of the arrangement. The creation of an LPS-conservatorship requires a court or jury finding that the proposed conservatee is "beyond a reasonable doubt" gravely disabled due to a mental disorder. The purpose of the LPS- conservatorship is to "ameliorate the conservatee's grave disability."

In Santa Clara County, the LPS-conservator's powers (authority) are tailored to meet the needs of the individual conservatee. For example, the conservator may have power to manage the conservatee's finances, and/or consent to medical treatment on the conservatee's behalf, and/or secure the conservatee's place of residence. Because the LPS conservatorship is designed to promote mental health treatment, the LPS conservator's set of powers will typically include at least one of the following three powers related to mental health treatment:

1. Power to apply for the conservatee's admission to Skilled Nursing Facilities, and similarly licensed settings.
2. Power to apply for the conservatee's admission to acute inpatient psychiatric care.
3. Power to require the conservatee to receive psychiatric medication.

Temporary Conservatorship (T-Con)

Where temporary conservatorship is indicated, the fact shall be alternatively pleaded in the petition. The officer providing conservatorship investigation or

other county officer or employee designated by the county shall act as the temporary conservator (Temporary conservator is always the public guardian). 5352.1. The court may establish a temporary conservatorship for a period not to exceed 30 days and appoint a temporary conservator on the basis of the comprehensive report of the officer providing conservatorship investigation filed pursuant to Section 5354, or on the basis of an affidavit of the professional person who recommended conservatorship stating the reasons for their recommendation, if the court is satisfied that such comprehensive report or affidavit show the necessity for a temporary conservatorship.

Except as provided in this section, all temporary conservatorships shall expire automatically at the conclusion of 30 days, unless prior to that date the court shall conduct a hearing on the issue of whether or not the proposed conservatee is gravely disabled as defined in subdivision (h) of Section 5008. If the proposed conservatee demands a court or jury trial on the issue whether they are gravely disabled, the court may extend the temporary conservatorship until the date of the disposition of the issue by the court or jury trial, provided that such extension shall in no event exceed a period of six months. At that point the temporary conservatorship will either be allowed to expire or the conservator will petition for a conservatorship, which would last for one year before needing dismissal for renewal.

Probate Conservatorship

The creation of a probate conservatorship (Probate Code, Section 1800, et seq) requires a court finding that there is "clear and convincing evidence" that the proposed conservatee lacks the mental capacity to do one or both of the following:

1. Provide for their personal needs for physical health, food, clothing or shelter
2. Manage their own financial resources or resist fraud or undue influence.

Process

Probate conservatorship is initiated by petition. Probate Code, Section 1820 lists persons authorized to file petitions. Generally, any adult (there are exceptions that

are not relevant here) may petition to have a probate conservator appointed for themselves or for another person. A probate conservatorship continues until terminated by the death of the conservatee or by order of the court. The process for termination by court order begins with a petition. The court may revise the conservatee's disabilities and/or the conservator's powers to accommodate changes in life circumstances. The process for making revision begins with a petition.

- **Probate Conservatorship with Dementia Powers:**

This is not a new conservatorship, but is a traditional probate conservatorship with additional powers:

1. Used to avoid abuse of psychotropic medications and locked placements for dementia placements; provides vehicle by which "unique and special needs" of dementia patients can be met while preserving their basic dignity rights.
2. Allows conservator to place conservatee in a (a) secured perimeter residential care facility for the elderly operated pursuant to Health and Safety Code § 1569.698; or (b) a locked and secured nursing facility which specializes in the care and treatment of people with dementia pursuant to Health and Safety Code § 1569.691, and which has a care plan that meets the requirements of California Code of Regulations Title 22 § 87724.
3. Allows conservator to authorize the administration of medications appropriate for the care and treatment of dementia.

6500 Conservatorship for the Intellectually Disabled

The 6500 conservatorship is a limited Conservatorship designed for the Intellectually Disabled who require Regional Center assessment (Welfare and Institutions Code 6500). Diagnosis which fall into the purview of Intellectual Disabilities includes intellectual disabilities, cerebral palsy, epilepsy, and autism. Additionally, the disability must originate before age 18.