

Protecting Loved Ones with Special Needs

Limited Conservatorships



Presented by

Lorna J. Drope, J.D., LL.M.

Special Needs Law Group, APC



Limited Conservatorship

What is a Limited Conservatorship?

- Court Supervised Protective Proceeding Granting an Individual Legal Responsibility for Another
- 18 Years of Age or Older (Prior to age 18 – unnecessary)
- **Conservator:** Person granted control of the protected person's well-being (health, welfare & safety)
- **Conservatee:** Protected person (developmentally disabled)
- Only For Developmentally Disabled Individuals
- Least restrictive alternative

Underlying Objective: *To ensure that persons with developmental disabilities receive services resulting in more independent, productive, and normal lives.*

Probate Code 1801(c) & Welfare and Institutions Code 4501



Limited Conservatorship

Types of Conservatorships

- Limited Conservatorship (CA Probate Code 1800 et. seq)
 - Applies only to Developmentally Disabled
- General Conservatorship
 - Applies to all other adults
 - Physical injury, advanced age, dementia, or other conditions rendering them incapable of caring for themselves
 - Or subject to undue influence
- LPS Conservatorship (Lanterman-Petris-Short Act under CA Welfare & Institutions Code 5000 et. seq.)
 - **Psychiatric disability.** Gravely disabled as a result of mental disorder or impairment by chronic alcoholism
 - Usually in a mental care facility, recommended by staff
 - Must be found by a court or jury to be gravely disabled beyond a reasonable doubt
 - Terminates after 1 year unless renewed



Limited Conservatorship

Terminology

- Guardianship vs. Conservatorship
- Conservator of the Person
- Conservator of the Estate
 - Most common for general conservatorship
 - Limited conservatorship
 - Custodial Accounts (UTMA)
 - Insurance owed by conservatee
 - Inheritance
 - Not necessary for managing government benefits (SSI, SSDI, etc.)



Limited Conservatorship

Regional Center

- 21 Regional Centers throughout California
- Nonprofit organizations funded by CA Dept. Developmental Services – to provide service and support.

Eligibility (W&I Code 4512)

- “Developmental Disability” must have occurred before age 18 and continues, or is expected to continue indefinitely, and constitutes a substantial disability for that individual.
- 5 Categories
 - Intellectual Disability
 - Epilepsy
 - Cerebral Palsy
 - Autism
 - 5th Category



Limited Conservatorship

Regional Center – Eligibility (W&I Code 4512)

- Must have one diagnosis (from the 5 categories) and have significant functional limitations in at least 3 of the following areas of major life activity:
 - Communication
 - Independent living
 - Self care
 - Learning
 - Mobility
 - Self Direction
 - Economic Self Sufficiency



Limited Conservatorship

Major Differences From General Conservatorship

- Only for Adults with Developmental Disabilities
 - May appoint conservator or a limited conservator if proposed conservatee lacks capacity to perform ALL tasks necessary to provide for physical health, food, clothing, or shelter. (PC 1828.5)
- Requires Regional Center Assessment
- Specific Powers Must be Requested/Delineated in Petition
- Conservator has Duty to Assist Conservatee in the Development of Maximum Self-reliance & Independence
- Court appointed Counsel for Limited Conservatee
 - Appointment of counsel now required in all conservatorships for key proceedings. (AB1194. PC 1471 Effective 1/1/2022)
 - **A zealous, independent advocate representing the wishes of their client**



Limited Conservatorship

Specific Powers – Conservatorship of the Person

- To Have Access to Confidential Records & Papers of the Conservatee



- To Determine Residence of the Conservatee

- To Make Decisions Concerning the Education of the Conservatee

- To Hold the Power of the Conservatee to Give or Withhold Consent to Medical Treatment



- To Control the Right of the Limited Conservatee to enter into Contracts

Limited Conservatorship

Specific Powers – Limited Circumstances

- To Consent or Withhold Consent to the Marriage of the Conservatee
- To Control Social and Sexual Contacts or Relationships



Attachment to Petition

ATTACHMENT 1h

- A. Petitioner requests the court grant the following powers and controls over the proposed limited conservatee in its order appointing the limited conservator of the person:
1. To fix the residence or specific dwelling of the limited conservatee.
 2. To have access to the confidential records and papers of the limited conservatee.
 3. To control the right of the limited conservatee to contract.
 4. To have the exclusive authority to give or withhold consent to medical treatment for the limited conservatee.
 5. To make all decisions concerning the education of the limited conservatee.
- B. In addition, the limited conservator shall have the care, custody, and control of the limited conservatee. The limited conservator shall secure for the limited conservatee such habilitation or treatment, training, education, medical and psychological services, and social and vocational opportunity as appropriate and will assist the limited conservatee in the development of maximum self-reliance and independence.

ATTACHMENT 1j

Petitioner requests the court grant an order to limit the civil and legal rights of the proposed conservatee as follows:

1. The power to fix the residence or specific dwelling of the limited conservatee be denied the limited conservatee.
2. The right to contract be denied the limited conservatee.
3. The power to give or withhold medical consent to his treatment be denied the limited conservatee.
4. The right to make decisions concerning his education, except with the consent of the limited conservator, be denied the limited conservatee.



ATTACHMENT 1h

- A. Petitioner requests the court grant the following powers and controls over the proposed limited conservatee in its order appointing the limited conservator of the person:
1. To fix the residence or specific dwelling of the limited conservatee.
 2. To have access to the confidential records and papers of the limited conservatee.
 3. To control the right of the limited conservatee to contract.
 4. To have the exclusive authority to give or withhold consent to medical treatment for the limited conservatee.
 5. To make all decisions concerning the education of the limited conservatee.
- B. In addition, the limited conservator shall have the care, custody, and control of the limited conservatee. The limited conservator shall secure for the limited conservatee such habilitation or treatment, training, education, medical and psychological services, and social and vocational opportunity as appropriate and will assist the limited conservatee in the development of maximum self-reliance and independence.

ATTACHMENT 1j

Petitioner requests the court grant an order to limit the civil and legal rights of the proposed conservatee as follows:

1. The power to fix the residence or specific dwelling of the limited conservatee be denied the limited conservatee.
2. The right to contract be denied the limited conservatee.
3. The power to give or withhold medical consent to his treatment be denied the limited conservatee.
4. The right to make decisions concerning his education, except with the consent of the limited conservator, be denied the limited conservatee.



Limited Conservatorship

What Happens If a Child has assets in his/her name upon attaining the age of 18?

- Conservatorship of the Estate
 - Inventory & Appraisal
 - Conservator must be bonded
 - Accounting filed with the court (every 2 years)
 - All income, money, and property
 - What was spent
 - The date of every transaction
 - The purpose of every transaction, and
 - Remaining Balance After the estate's expenses are paid.
- Disqualified from Needs Based Benefits
- May Establish a First Party Special Needs Trust



Limited Conservatorship

What Should I Expect?

- Petition Filed and a Hearing Date Assigned (3-6 Months out)
- Specific Powers Must be Requested/Delineated in Petition
- Confidential Supplemental Information (Justifying Powers Requested)
- Notice to First and Second Degree Relatives
- Notice to Conservatee
- Capacity Declaration: Medical Practitioner Evaluates Proposed Conservatee's Mental Functioning
- Proposed Conservatee Must be Assessed by Regional Center; Regional Center Files Report with the Court.
- Investigation by Court Investigator; Report filed with the Court
- Appointment of Counsel for Proposed Conservatee

Limited Conservatorship

Alternatives to Conservatorship

- Voluntary acceptance of formal/informal assistance
- Power of Attorney
- Trust
- Supported Decision Making
 - AB 1663 Effective 1/1/2023
 - An individualized arrangement in which an adult with a disability chooses one or more trusted supporters to help them understand, make, communicate, implement, or act on, their own choices.
 - **Can be used in conjunction with conservatorship**



Limited Conservatorship

The Probate Conservatorship Reform and Supported Decision-Making Act (AB 1663)

Supported Decision Making

- Limit probate conservatorships by recognizing SDM as a less restrictive alternative
- Make probate conservatorships easier to end. Allow courts to terminate conservatorship without a hearing if both the conservator and conservatee agree to terminate the conservatorship
- Give conservatees choice in their lives by requiring conservators to consult with and make decisions aligned with the conservatee's wishes or previously expressed preferences.



Protecting Loved Ones with Special Needs

Limited Conservatorships

Thank you!



Special Needs Law Group, APC

Special People, Special Planning

