

Introduction

In California, a "Conservatorship" is a proceeding in which a court appoints one person (the "conservator") to make decisions for another (the "conservatee") who may be unable to do so himself because of a mental or physical disability.

Conservatorships may be "of the estate" or "of the person". A conservator of the estate is appointed to manage the conservatee's financial affairs. A conservator of the person is appointed to make personal decisions for the conservatee, such as where he will reside, what medical treatment he will receive, etc.

The conservator of the estate may or may not be the same person as the conservator of the person. Depending upon the circumstances, it is not always necessary for a conservator to be appointed for both the person and the estate.

Procedure

A conservatorship is begun when someone files a "Petition for Conservatorship" in the Superior Court of the county where the conservatee resides. The person filing the petition is called the "petitioner". The petitioner requests that a particular person, often himself, be appointed conservator, and states the sorts of powers he wants the court to grant.

A hearing will be set in approximately three weeks. In the interim, the petitioner (or his attorney) must cause a "citation" to be served on the proposed conservatee. The citation is designed to inform the conservatee that someone wants to have a conservator appointed, and therefore deprive the conservatee of the right to handle his own affairs. The petitioner must also give notice to the conservatee's spouse and close

relatives.

Before the hearing is held, the court will appoint an investigator to make an independent evaluation of whether the conservatorship is necessary or desirable. The conservatee himself has the right to be represented by an attorney, and the court sometimes appoints one.

The proposed conservator must attend the hearing on whether the conservator should be appointed, as must the conservatee unless he has a medical condition which makes attendance impossible or harmful.

Often there is no dispute when the matter comes to hearing, and the conservator is appointed as a matter of course.

Sometimes the conservatee (or one of his relatives) disputes who should be appointed conservator or whether a conservatorship is necessary at all. In either case, another hearing will be scheduled so that all parties will have an opportunity to present evidence and arguments about the disputed issue.

Temporary Conservatorships

It may be necessary to have a temporary conservator appointed before a full hearing can be held. For instance, the conservatee may need an emergency decision made concerning medical treatment, or some immediate action taken in order to preserve an asset. In such a case, the court may appoint a temporary conservator, usually with powers limited to those which are needed to deal with the emergency.

The proposed conservatee must be given some notice (usually a few days) that the request for a temporary conservatorship will be made, so that he may contest it if he wishes.

Letters of Conservatorship

If the judge grants the petition he will sign an order appointing the conservator, and in the case of a conservatorship of the estate, setting the amount of bond which the conservator must file.

The purpose of the bond is to insure that the conservator does not abscond with the conservatee's property. When a bond has been posted, the court clerk will issue "Letters of Conservatorship", which is a paper bearing the court's seal indicating that the conservator has the powers which have been ordered by the court.

Inventory and Accounting

The conservator of an estate is required to take possession of the conservatee's assets and property. He is then required to file an inventory of them within 90 days of his appointment.

At the end of the first year of the conservatorship, and every two years thereafter, the conservator is required to file an accounting with the court to detail the transactions which he has undertaken.

Expenses and Compensation

The conservator is not required to ask the court's permission to pay ordinary expenses of the conservatee. On the other hand, he is required to ask permission before he reimburses himself for attorneys' fees which he has incurred (or pays them from the estate of the conservatee). Further, although a conservator is entitled to reasonable compensation for his services, he may not pay himself from the estate without court approval.

Requests that the conservator be allowed

compensation and be allowed to reimburse himself or pay attorneys' fees are usually made at the time the accountings are submitted.

Alternatives

Conservatorships can be cumbersome and expensive. In many cases, the strict safeguards required in conservatorship proceedings such as bonds and accountings are unnecessary.

It is possible to provide for one's personal and financial care during periods of incapacity without a conservatorship. In particular, a durable power of attorney for asset management can often avoid the necessity of a conservatorship of the estate, and a durable power of attorney for health care can do the same for many of the decisions required of a conservator of the person. Similarly, a living trust may provide a vehicle for the management of ones assets and payment of his bills when incapacitated.

In any event, those devices must be in place before the person becomes incompetent, so some planning is important.

ABOUT ESTES & ESTES

Estes & Estes represents clients in estate planning and administration matters, as well as litigation relating to those areas. The firm's attorneys have collectively more than 50 years of service to families in South Orange County.

We strive to deliver legal services at the highest level and at the same time, fully understand the unique needs of each of our clients.

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Attorneys at Law

ESTES

CONSERVATORSHIPS



629 Camino de los Mares, Suite 203
San Clemente, California 92673\

Voice: 949.443.9011

Facsimile: 949.443.9144

Web site: estesandestes.com