

SELF-HELP INFORMATION SHEET

Probate Conservatorship

A general probate conservatorship is a court case where a judge appoints a responsible person or organization (called the “conservator”) to care for another adult (called the “conservatee”) who cannot care for himself or herself or manage his or her own finances.

The probate court can appoint a conservator of the person, a conservator of the estate, or both, depending on the needs of the conservatee.

- A conservator of the **person** cares for and protects a person when the judge decides that the person cannot care do it. The conservator is responsible for making sure that the conservatee has proper food, clothing, shelter, and physical medical care. Depending on the conservatee’s ability to understand and make decisions, the conservator may need to make important medical choices for him or her.

Note that if the conservatee’s main challenges stem from a mental illness, a probate conservatorship may not be the best option. If you are seeking to be appointed the conservator of a mentally ill person, it is important that you understand the limitations on a probate conservatorship. For example, a probate conservator cannot commit a conservatee to a mental health facility against the conservatee’s will. If involuntary mental health treatment is needed, it is recommended that you contact the Public Guardian and ask about an LPS conservatorship or about Laura’s Law.

- A conservator of the **estate** handles the conservatee’s financial matters — like paying bills and collecting a person’s income — if the judge decides the conservatee cannot do it.

Being appointed conservator of the person does NOT automatically make that person the conservator of the estate. If someone wants to be conservator of both the person and the estate, he or she must petition to be appointed as both. If someone is a conservator of the person and later decides that he or she needs to be appointed as conservator of the estate, he or she can file a new petition for conservatorship and, this time, request to be appointed as conservator of the estate. However, if the conservatee’s only estate consists of public benefits, a conservatorship of the estate may not be necessary. In such cases, it is recommended that you contact the public benefits agencies involved and ask about being appointed a “representative payee” before seeking appointment as a conservator of the estate.

The Conservatorship Court Process

Setting up a conservatorship is a long and complex process. Before asking the court to appoint a conservator, the person asking for the conservatorship should be sure this is an appropriate arrangement for the proposed conservatee.

- **Starting the conservatorship.** The process may be started by: the proposed conservator; the proposed conservatee; the spouse, domestic partner, a relative, or a friend of the proposed conservatee; another interested person; or an interested state or local agency, employee of the agency, or public officer. The process starts once all the necessary paperwork is filed with the court.
- **Completing the petition.** The petition must include information about the proposed conservator and conservatee, relatives, and the petitioner (the person filing the case in court), and the reasons why a conservatorship is necessary. It must also explain why the possible alternatives to a conservatorship are not available in this case. Click for [Information You Need for a Conservatorship Case](#)—it gives you a list of information and documents to gather before you fill out the petition and other forms.
- **Filing of the petition.** The petitioner files the petition with the court clerk. He or she must pay the filing fee, plus a court investigator fee. A court date will be scheduled by the clerk. If the conservatee is low income, the petitioner can [ask the court for a fee waiver](#). [Click here](#) for a copy of the applicable Request to Waive Court Fees, and [click here](#) for a copy of the Order on Court Fee Waiver which must be submitted with the Request.
- **Informing the proposed conservatee.** The petitioner must have someone else personally deliver a citation and a copy of the petition to the proposed conservatee.
- **Informing the proposed conservatee's relatives.** The petitioner must have someone else mail a written notice about the court hearing on the conservatorship petition, together with a copy of the petition, to the conservatee's spouse or domestic partner and close relatives.
- **Online examination notes.** An examiner who works for the court will review the petition to make sure it contains all required information and attachments. If the examiner thinks information is missing, he or she will post a note on the court's website. You can access your notes online by clicking [here](#) and then typing your case number into the search box
- **Investigation by a court investigator.** A court investigator will visit the proposed conservatee at his or her residence and talk to the proposed conservatee and others who may be familiar with the conservatee's condition. The court will assess the conservatee's estate for the cost of this investigation

unless the court decides that the assessment would be a hardship for the conservatee.

- **Conservatorship orientation session and Handbook for Conservators.** The order appointing a probate conservator will not be signed until the proposed conservator attends a conservatorship orientation session held at the Orange County Central Justice Center. At the session, the proposed conservator will receive an attendance certificate that he or she must then file. The proposed conservator must purchase a copy of the [Handbook for Conservators](#) from the court or download it from [here](#).
- **Hearing.** The proposed conservatee must go to the hearing unless he or she is excused because of illness. At the hearing, a judge will determine if everyone has been properly notified and if a lawyer needs to be appointed to represent the proposed conservatee. (In some cases, the court will have appointed an attorney for the conservatee before the hearing.) Once the judge is ready to make a decision, he or she may grant or deny the conservatorship.
- **After the hearing.** If the judge grants the petition, the conservator must submit to the clerk's office a proposed [Order Appointing Probate Conservator](#) and [Letters of Conservatorship](#). If there is an estate, a surety bond must be filed unless the court orders the conservatee's bank accounts to be frozen or unless the estate is very small and meets certain conditions. Note that the conservator is required to file other documents after the hearing in addition to submitting a proposed order and Letters of Conservatorship. Please see the Self-Help Center's post-appointment packet for more information on required documents.
- **Post-appointment review hearings.** At the appointment hearing, the judge will set two review hearings. The first will be set three to four months after the date of the appointment. The purpose of this hearing is to make sure that the conservator has properly filed all post-appointment documents required by law. The conservator must attend this hearing unless he or she has submitted all required documents, and the online examination notes for the hearing say, "Recommended off calendar." The second review hearing will be set around one year from the date of appointment. If the conservatorship is for the person only, the conservator does not need to appear at this particular review hearing. But if the conservatorship is for an estate, the conservator will need to appear at the hearing unless the conservator files his or her first accounting at least a week before the hearing date and the online examination notes say, "Recommended off calendar."

A conservator's powers do not become active until the court issues the Letters of Conservatorship. Once the conservator receives back a copy of the Letters, he or she can then assume the powers authorized under the law. Each conservator has an ongoing duty to report to the court for reviews as directed and to meet with the court

investigator. Conservators of the estate also have a duty to file accountings on a regular basis unless the judge has made an order waiving the accountings.

Temporary Conservatorships

A judge may appoint a temporary conservator to take care of a conservatee's more immediate needs that cannot wait until a general conservator is appointed. A temporary conservator may also be appointed by the court to fill in temporarily in between permanent conservatorships, for example, if one conservator is removed and a new one has not yet been appointed.

Temporary conservatorships have a specific end date. A temporary conservator is usually appointed for a fixed period, usually 30 to 60 days. These conservatorships can be of the person, of the estate, or both. The main role of the temporary conservator is to ensure the temporary care, protection, and support of the conservatee. And the temporary conservator of the estate protects the conservatee's finances and property from any loss or damage until a general conservator can take over the management of the estate.

A temporary conservator cannot, without the judge's prior approval:

- Move the conservatee from his or her home (unless it is an emergency) ;
- Sell the conservatee's home, or, if the conservatee is a renter, give up the lease; or
- Sell or give away an estate asset.

Note that the court will not appoint a temporary conservator unless there is also a petition for appointment of a permanent conservator pending.

To ask for the appointment of a temporary conservator on an ex parte basis, you must follow all the rules applicable to ex parte hearings in addition to filing the required forms. Information on the ex parte procedures can be found [here](#) on the court's website.