

Conservatorships For People With Disabilities

By Trevor Stapleton

1. What is a conservatorship?

A conservatorship is a court proceeding through which a responsible person (called a conservator) is appointed by the court to care for another adult who cannot care for him/herself or his/her finances (called a conservatee).

2. What is a Limited Conservatorship?

A “Limited Conservatorship” is a special type of conservatorship intended specifically for a person with a “developmental disability.” The goal is to encourage the limited conservatee's maximum self-reliance and independence. As such, the limited conservator is generally only granted those powers that are necessary to aid the limited conservatee in those areas that the limited conservatee needs assistance.

3. Who determines if a person has a “developmental disability”?

Generally, the Regional Center will make the determination if a person is developmentally disabled. If the person is a client of the Regional Center, then he or she automatically qualifies. Otherwise, the Regional Center will assess the individual to determine if he or she has a developmental disability.

4. What kinds of powers can a limited conservator be granted?

People with developmental disabilities can usually do many things on their own. As such, the limited conservator is only granted limited powers to do things the limited conservatee cannot do without help. The powers that the limited conservator may be granted are generally limited to the powers to:

- Fix the residence or specific dwelling of the limited conservatee;
- Access confidential records and papers of the limited conservatee;
- Consent or withhold consent to the marriage of, or the entrance into a registered domestic partnership by, the limited conservatee;
- Contract on behalf of the limited conservatee;
- Give or withhold medical consent on behalf of the limited conservatee;
- Control social and sexual contacts and relationships of the limited conservatee;
and
- Make decisions concerning the education of the limited conservatee.

However, because the court will only grant those powers that are necessary to aid the limited conservatee, not all these powers are granted in every case. For example, it is

uncommon for the court to grant the limited conservator the power to control relationships of the limited conservatee unless the limited conservatee has shown that he or she makes poor choices that put him or her in danger, such as being in abusive relationships.

5. Who can be appointed as limited conservator?

Although any responsible adult can act as a limited conservator, limited conservators are usually parents or siblings of the person with the disability. It is also possible to appoint more than one person as limited conservator at the same time. In fact, it's a good idea to have at least one parent and a sibling or other relative act as co-limited conservators. That way, if one co-limited conservator dies or becomes incapacitated, there is still a limited conservator in place. Otherwise, a new limited conservator would have to be appointed through court proceedings.

6. Can I avoid court proceedings by naming a limited conservator for my child in my Will or living trust ?

No. Only the court can appoint a limited conservator.

7. What if I decide not to establish a limited conservatorship?

In most cases, adults with development disabilities are not able to give informed consent for medical treatment or to sign contracts. As such, if a limited conservatorship is not established, the director of the Regional Center has the authority to make most of the decisions for the adult with development disabilities including residence, medical care, and contracting for services.

8. When should I apply for limited conservatorship?

If you are trying to establish a limited conservatorship for someone who will soon be 18, it is a good idea to start the process more than 3 months before his or her 18th birthday. A limited conservatorship is a court proceeding and it takes time to gather reports and hold court hearings before the limited conservator is actually appointed.

9. If I am a limited conservator, do I also need a conservatorship of the estate?

Generally, you do not need a conservatorship of the estate if the limited conservatee gets only public assistance, like Supplemental Security Income (SSI) or Social Security (SSA) but has no other assets. But, you will need a conservatorship of the estate if the limited conservatee has other assets, like an inheritance or a settlement from a lawsuit that is not in a trust for a person with a disability.

10. Does the court supervise the limited conservator?

Yes. Generally, a court investigator will review the case one year after the conservatorship is granted, then every 2 years after that. The review will include discussion with the limited conservator and a visit with the limited conservatee.

If a conservatorship of the estate is established, the conservator will be required to file an annual report with the court to show how the money in the conservatorship is being managed and spent.

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