

## LAW OFFICE OF

## Limited Conservatorships



#### WHAT IS A CONSERVATORSHIP?

A court case where a judge appoints a responsible person (a "conservator") to care for another adult (a "conservatee") who cannot care for him or herself.

#### **GENERAL CONSERVATORSHIP**

Applies to an incapacitated person without a developmental disability (for example, an elderly person with dementia).

#### LIMITED CONSERVATORSHIP

Applies to an incapacitated person with a developmental disability. The powers granted to the conservator are limited to specific powers granted by the court. Conservatorship of the Person & Conservatorship of the Estate

**Person:** Grants the conservator the power to make non-financial decisions related to the conservatee (for example: place of residence, medical treatment and education).

**Estate**: Grants the conservator the power to manage the conservatee's assets other than wages and public benefits.

\*\* If your child is receiving public benefits, you have the option to be the representative payee to manage those funds. For more information, visit <u>http://www.ssa.gov/payee</u>.

## Do I need a conservatorship?

What are the alternatives to conservatorship?



### **Standard of Proof**

## A conservator of the person may be appointed for a person who is unable

appointed for a person who is unable to provide properly for his or her personal needs for physical health, food, clothing, or shelter.

– Probate Code §1801(a)

### **Standard of Proof**

A conservator of the estate may be appointed for a person who is substantially unable to manage his or her own financial resources or resist fraud or undue influence.

Probate Code §1801(b)



## What **powers** can I request under a conservatorship of the person?

- ♦ To fix the residence or specific dwelling of the conservatee
- $\diamond$  To have access to the confidential records and papers of the conservatee
- To contract on behalf of the limited conservatee and to set aside contracts of the limited conservatee
- ♦ To consent to medical treatment on behalf of the conservatee
- ♦ To control the education of the conservatee
- $\diamond$  To control the social and sexual contacts and relationships of the limited conservatee
- To consent or withhold consent to the marriage of, or the entrance into the registered domestic partnership by, the limited conservatee



- Promote and protect the well-being of the individual
- Encourage development of maximum selfreliance and independence of the individual

## WHO ACTS AS CONSERVATOR?

#### **Family or friend**

You can appoint coconservators such as parents or siblings

#### Professional

There are professional conservators if a family member is not an option File a petition and accompanying documents The Public Defender's Office is appointed to represent the proposed conservatee. The Regional Center is ordered to prepare a required report.

You must mail Notice of Hearing to necessary parties and have the proposed conservatee served with a Citation.

The Court Investigator interviews various people and files a report.

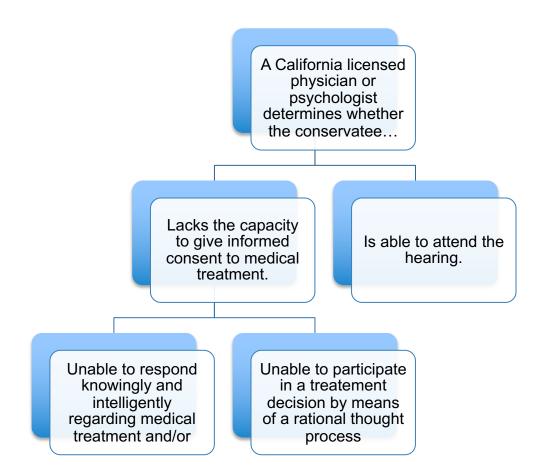


The hearing

### THE PROCESS

STEP 1: CAPACITY DECLARATION





Capacity Declaration (Form GC-335)

### STEP 2: FILING A PETITION





### FILING A PETITION

#### Where?

At the probate filing office of the county court where the proposed conservatee lives

#### When?

A conservatorship cannot go into effect until the 18<sup>th</sup> birthday

#### Cost?

\$435 filing fee unless you file a Request to Waive Court Fees and it is granted

#### **PETITION AND ACCOMPANYING DOCUMENTS**

- 1. Petition for Appointment of Probate Conservator (GC-310)
- 2. Confidential Supplemental Information(GC-312)
- 3. Confidential Conservator Screening Form (GC-314)
- 4. Duties of Conservator and Acknowledgment of Receipt of Handbook for Conservators (GC-348) The handbook can be found online http://www.courts.ca.gov/documents/handbook.pdf
- 5. Citation for Conservatorship (GC-320)
- 6. Notice of Hearing (GC-020)
- 7. Capacity Declaration (GC-335)
- 8. Order Appointing Probate Conservator (GC-340)
- 9. Letters of Conservatorship (GC-350)
- All documents can be found at: <u>http://www.courts.ca.gov/forms</u> (Probate Guardianships and Conservators)
- Provide the second count to make sure they do not have any required local forms in addition to the judicial council forms

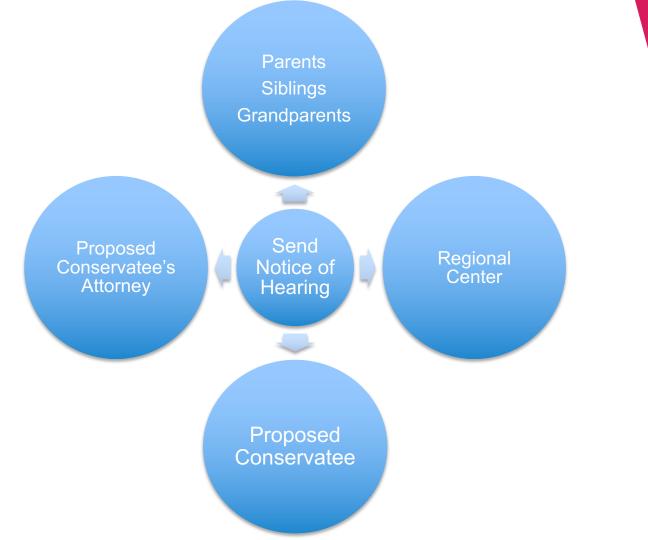


#### **Fee Waiver**

- ♦ Form FW-001-GC Request to Waive Court Fees
- ♦ Form FW-003-GC Order on Court Fee Waiver
- $\diamond~$  If the proposed conservatee receives SSI, Medi-Cal or IHSS, fees will be waived
- If the proposed conservatee does not receive public benefits but qualifies as low income, the fees will be waived
- Fees will not be waived if the proposed conservatee is the beneficiary of a funded special needs trust

STEP 3: NOTICE OF HEARING





### Notice of Hearing

### STEP 4: CITATION





### SERVING THE CITATION

- The proposed conservtee must be personally served with the Citation and a copy of the petition no later than 15 days prior to the hearing
- Personal service: It cannot be mailed. It must be personally handed to the proposed conservatee.
- The person serving must be 18 or over and not a party to the proceeding.

### STEP 5: ATTORNEY



#### **The Proposed Conservatee's Attorney**

- In a limited conservatorship, all proposed conservatees are appointed an attorney by the court. In Marin, Sonoma, Alameda, and Solano this attorney is from the Public Defender's office. In SF, Contra Costa, and San Mateo this attorney is private counsel appointed.
- ♦ The attorney will visit the proposed conservatee and interview him/her.
- In some counties the attorney files a report with the court stating their position, and in other counties the attorney just communicates to the court their position via email or in-person at the hearing.

STEP 6: REGIONAL CENTER



## REGIONAL CENTER

- The proposed conservatee is required to be assessed by the Regional Center within 30 days of the filing of the petition
- The Regional Center is required to submit a report to the court prior to the hearing
- The report will state the Regional Center's recommendation concerning each of the powers requested by the proposed conservator

## "

The findings and recommendations of the regional center are not binding upon the court.

– Probate Code §1827.5



**STEP 7: COURT INVESTIGATOR** 

#### THE COURT INVESTIGATOR MUST

 ✓ Inquire into the nature and extent of the general intellectual functioning of the individual Evaluate the extent of the impairment of his or her adaptive behavior

Ascertain
his or her
capacity to
care for
him or
herself and
his or her
property

 Inquire into the qualifications, abilities and capabilities of the person seeking appointment as limited conservator

#### The Court Investigator Does the Following:

- $\diamond$  Interviews the proposed conservatee and conservator
- ♦ Interviews other people involved with the proposed conservatee's daily life (family, day program or school staff, etc.)
- $\diamond$  Interviews the Regional Center case worker
- $\diamond\,$  Runs a background check on the proposed conservators
- $\diamond\,$  Files a report with the court detailing his/her findings

Court Investigator fees are around \$850 (depending on county), but will be waived if there is a fee waiver on file

### STEP 8: THE HEARING



#### **PRIOR TO THE HEARING**

#### Order

Submit your proposed order to the court

#### Letters

Prepare your Letters of Conservatorship and bring them with you

#### Video

Watch the Conservatorship video ("With Heart: Understanding Conservatorship") Do my child and I need to be at the hearing?

- In most counties, an appearance is required.
- In some cases, the conservatee's attorney will waive their client's appearance.





# What happens at the hearing?

The proposed conservatee's attorney and your attorney (if you have one) will appear

The judge may ask some questions

- Assuming all is in order, the judge will sign the order
- You take the order to the filing window to have your Letters of Conservatorship issued

#### Letters of Conservatorship

- ♦ This document serves as evidence of the conservator's authority to act on the conservatee's behalf
- ♦ The powers outlined in the Letters must match those outlined in the Order signed by the judge
- ♦ There is a fee for each certified copy you get unless you have a fee waiver on file

### AFTER THE HEARING



### THESE DOCUMENTS MUST BE FILED AFTER THE HEARING

 Notice of Conservatee's Rights
Must be mailed within 30 days to:

- Conservatee
- Conservatee's attorney
- Parents
- Siblings
- Grandparents

Proof of mailing must be fled with the court. (Form GC-341)  Determination of Appropriate Level of Care
Must be filed within 60 days
(Form GC-355) ☑ General Plan

Most counties have their own form which must be filed within 90 days

- $\diamond$  A limited conservatorship lasts for the lifetime of the conservator
- ♦ The court will terminate the conservatorship if they find that it is no longer necessary
- ♦ Court reviews After the first year and every 2 years thereafter
- ♦ Some counties require a status report be filed by the conservators at the review times
- ♦ A conservator of the estate is required to file an accounting after the first year and every 2 years thereafter
- ♦ If the conservatee moves, you must notify the court BEFORE and AFTER the move (Forms GC-079 and GC-080)

Conservatorship Maintenance

How do I prepare for down the road?



- ☑ Nominate a successor conservator in a legal document
- ✓ Petition for the appointment of a co-conservator that can continue on as sole conservator once you are no longer able to serve

DOWN

ROAD

THE

- ☑ Make sure that any inheritance being left to the conservatee is designated to go to a special needs trust instead of to the conservatee directly
- Set up an ABLE Account (529A account) for the conservatee
  - <u>http://tinyurl.com/ABLE10thingstoknow</u>
  - http://www.ablenrc.org

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## **THANKS!**

## Any questions?

You can find me at alexis@alexislynchlaw.com

Law Office of Alexis Lynch 802 B Street San Rafael, CA 94901 (415) 795-1838 www.alexislynchlaw.com