

Conservatorships & Alternatives



LAW OFFICES OF
JEFFREY C. NICKERSON
ESTATE PLANNING

29970 Technology Drive, Suite 203, Murrieta, CA 92563

951-200-4921 – Info@JeffNickLaw.com

MEMBER OF THE ACADEMY OF
**SPECIAL NEEDS
PLANNERS**



Jeffrey C. Nickerson, Esq.

Background

Legal Background

- J.D, M.B.A. & B.S. Finance
- Attorney over 20 years
- Special Needs Experienced
- Academy of Special Needs

Special Needs Background

- Children w/ "Disabilities"
- Special Olympics
- Exceptional Sports - 501(c)(3)
- Community Involvement



Disclaimer

The following presentation is
Legal Information
Not Legal Advice



What is a Conservatorship?

DEFINITION: A **Conservatorship** is a court case where a judge appoints a responsible person (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.

It is the Government taking away the rights of one person and giving it to another.



It's a Big Deal!



Very detailed process, very specific steps to insure it is really needed.

Can be confusing and frustrating - but it is necessary to protect the proposed Conservatee

(Called "Guardianship" in other states)



Do You Need A Conservatorship? Alternatives?

At age 18, The Law Presumes a Person is Competent!



Physicians and Financial People may not talk with you!

Alternatives:

- Financial Power of Attorney (POA)
- Advanced Health Care Directive (AHCD)



Types of Conservatorships

General Conservatorship

Usually for Persons who have lost mental capacity – Usually Elderly, (or not – Britney Spears)



Limited Conservatorship

Adults with Developmental Disabilities



Conservatorship of the Person & Estate



Limited Conservatee's Powers Granted to Conservator

- 1) The right to fix Residence
- 2) The right to access Confidential records and papers
- 3) To consent or withhold consent to Marriage
- 4) The right to Contract
- 5) The right to give or withhold Medical Consent
- 6) The power to control Social and Sexual contacts
- 7) The power to make Education decisions

Conservatorship Process

As a result – The process is Detailed and Thorough - Summary

- Lengthy list of Document need to be completed
- Papers Filed with Court – Court Hearing Set – 3–6 months out
 - The \$480 filing fee is often waived if receiving Govt benefits
- Notification Sent to Family Members
- Attorney assigned to proposed Conservatee
- Conservatee’s Attorney interviews the Conservatee & Family
- Court Investigator also interviews Conservatee & Family and performs background check
- Regional Center Evaluations
- Doctors Evaluations of Conservatee (Capacity Declaration)
- Probate Notes – Court Attorney Review & Correct Documents
- Court Hearing – (Covid Process)
- Issue Letters and Orders



Steps To Get A Conservatorship – Page #1

_____ Questionnaire Completed

_____ Complete Required Forms

_____ RI-PR 071 Certificate of Assignment

_____ RI PR067A Record Check Request (for all adults in the home)

_____ GC 310 Petition (and special attachment if for dementia)

_____ MC025 to further explain 1f, 1h, 1j, 3f(1), 3f(2), and 5f

_____ GC 312 Confidential Supplemental Information

GC 314 Confidential Conservator Screening Form

_____ GC 348 Duties of a Conservator

_____ RI PR 016 Probate Investigators Referral Report

_____ RI PR 044 Declaration of Petitioner Re Trusts etc.

_____ GC 340 Order Appointing Conservator

Steps To Get A Conservatorship – Page #2

_____ GC 350 Letters of Conservatorship

_____ GC 335 Capacity Declaration – Conservatorship (if for dementia also include form GC313)

_____ GC 320 Citation for Conservatorship

_____ GC 020 Notice of Hearing – Guardianship or Conservatorship

_____ GC020(MA) Attachment to Notice of Hearing Proof of Service

_____ Determine if there will be a Fee Waiver Request – If so, complete FW-001-GC, FW-003-GC, and FW-005-GC.

_____ Review all Forms with Client and notarize signatures. Give a copy of GC348 to proposed Conservator to take with them.

_____ File forms RI PR 071, GC 310, MC 025, GC 312, GC 314, GC 348, RI PR 016, RI PR 044, GC 340, GC 350 (signed by client), GC 335 (if completed, or at least a week prior to hearing) GC 320, GC 020 (and any Fee Waiver forms) at the Probate Clerks Office

Steps To Get A Conservatorship – Page #3

_____ Update calendar with Hearing date, including date to check probate notes 30 days prior to hearing and all notice dates.

_____ Mail Notice and Petition to Inland Regional Center 60-90 days prior to hearing. Address: 1365 Waterman Ave., San Bernardino, CA 92408. Alert by **phone** IRC Legal at 909 890-3403. Send **Fax** with Petition and Notice to 909 379-7600.

_____ Advise Proposed Conservator to review the Orientation for Conservators on line at least 5 days prior to the hearing, and complete RI PR 068 and file.

_____ Personally serve Conservatee with filed copy of GC 320, GC 310, and GC 020 at least 30 days prior to the hearing. Complete proof of service, then file.

_____ Mail to 1st or if none to 2nd degree relatives the GC 310 and GC 020 at least 15 days prior to the hearing. Complete proof of service, then file.

_____ If CG 335 was not filed in the original filing, assure it is filed within a week of the hearing date. (Doctor's completion of Capacity form)

_____ Attend Hearing, then calendar all follow up activities required

Steps To Get A Conservatorship – Page #4

_____Receive signed copies of Orders and Letters signed by the court

_____Within 30 days after hearing, serve Notice of Conservatee’s rights (GC341) on the Conservator, Conservatee, and the same list of Relatives noted

_____Within 60 days after hearing, complete and file Determination of Conservatee’s Appropriate Level of Care (GC-355) if Conservator of Person

_____Within 90 days of the hearing, Record Letters, Complete Inventory and Appraisal (GC 040) and Notice of Filing Inventory and Appraisal and How to Object to Inventory or Appraised Value (GC 042) if Conservator of the Estate

_____all dates and follow up activities complete, request a cancellation of 100 day hearing set by court.

_____ (Remind of the continued obligation for annual accounting to be reported to the court if Conservatorship of Estate)

Letters are your Authority to act as a Conservator.

After Conservatorship Award.

Post Hearing Documents (90 Day Documents)

More Court Investigations

Court Hearing - 1 year later

Then, every 2 years

Moving

In State - Notify Court

Out of State - Must get Permission - allow 4-6 months.



Conservatorship v. POA & AHCD

What are they?

Which One to Choose?

“Least Restrictive” Rule



Financial Power of Attorney

- Disabled Family member names a person (usually parent) to manage finances for them.
- The Disabled Family member must be Competent (my standard is low.)
- Comprehensive and Powerful document.
- However, it is the Disabled family member's document.
The disabled family member creates the document and has the power to cancel the document.



Health Care

Advanced Health Care Directive (AHCD)

- Allows a person (your disabled family member) to name a person (usually parent) to make Health Care Decisions, only if the disabled family member is unable to do so.
- Note: The disabled family member can still say “NO”.



What Do You Do!

Power of Attorney (PoA) – Advanced Health Care Directive (AHCD)

- Easy & Inexpensive to prepare
- Powerful
- Disabled Family Member can revoke the PoA it at any time
- Disabled Family Member can refuse Medical Treatment.



Limited Conservatorship

- Expensive – Time consuming
- Powerful – Disabled Family Member has no ability to refuse or revoke

Things to Consider

- Least Restrictive – Must Follow
- Significant Disability – Can't Communicate – Limited Conservatorship
- High Functioning – Compliant? PoA & AHCD may be adequate

Type of Disability

Downs – Usually Happy and Compliant

Mental Illness – Highly recommend Conservatorship

Ways to Get a Conservatorship

Do it yourself (Pro-Per) - Pro-Per is a Latin term meaning “for one’s self”

You Don’t have to Hire an Attorney!!

Inexpensive (“Free”) - Complicated – Do you have the time & energy
Riverside Courts have an excellent self-help section

Hire an Attorney

Expensive?

Finding one?

Low Income Free Support – Riverside County Bar Association

Paralegal - Other Document Preparation Services

Questions? Discussion





From "Mickey Mouse Club" to Sex Symbol and Single Mom

2006 - 2007 – A long list of published incidents including Britney Spears & Kevin Federline divorce. Eventually husband had control of the children

2008 - A Superior Court placed Britney Spears and her estate under conservatorship after the she was taken to a psychiatric hospital. Her father, James Spears, was named conservator of Spears herself. More incidents – Not Public.

2008 – 2020 – Over 12 years Conservatorship has done Britney well with her estate increasing by an estimated \$47 million to an estimated \$59 million. She has court ordered professional management of her estate while still living an opulent life-style.

2020 – Sought to have her father removed replaced by a California Licensed Bonded Professional Fiduciary.