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## CALIFORNIA COURTS

THE JUDICIAL BRANCH OF CALIFORNIA

# Information for the Conservatee

If you become a conservatee, you do not necessarily lose the right to take part in important decisions affecting your life or your property. As a conservatee, you have the right to be treated with understanding and respect and to have your wishes considered. You have all basic human rights as well, and the right to be well cared for by the conservator.

You also have the right to ask questions and to express concerns and complaints about the conservatorship and his or her actions as conservator. You can ask the court to review the conservator's handling of the conservatorship if you and the conservator cannot work out a dispute between you.

Even if you do not take direct action to have the court review the conservator's actions, the court itself will periodically send a person, called a court investigator, to see you, to ask you about your situation and desires, and to advise you of your rights. The court may also appoint a lawyer to represent you.

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### Your Rights as a Conservatee

As a conservatee, you generally keep the right to:

- Directly receive and control your own salary;
- Make or change your will;
- Get married (unless a judge has determined you do not have the capacity to do so);
- Get mail;
- Get visits from family and friends (unless a judge has ordered restrictions on visits or other contact with you);
- Have a lawyer;
- Ask a judge to change conservators;
- Ask a judge to end the conservatorship;
- Vote, unless a judge says you are not able to;
- Control personal spending money if a judge says you can have an allowance paid directly to you;
- Make your own health-care decisions, unless a judge gives that right to a conservator;
- Enter into business transactions to provide for your basic needs and those of your children;
- Participate in other activities the court allows you to do when the conservator is appointed, or when a court order later gives you that right if you ask for it.

If you, as the conservatee, are a patient in a board-and-care home, nursing home, or other care facility, the Patient's Bill of Rights applies. The Patient's Bill of Rights is a state law that lists a patient's personal, social, financial, and medical rights in the facility, including the right to privacy. As a patient, you must be given a copy of this Bill of Rights when you are admitted to the facility, and it must be posted in an obvious place in the facility.

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## Conservatee's Right to Be Represented By a Lawyer

As a conservatee, you have the right to be represented by a lawyer. For certain types of issues, the law requires that the court appoint a lawyer for you if you ask for one, or if the court believes the appointment would be helpful or is necessary to protect your interests. In those cases, the judge will decide if you can afford to pay the lawyer, either fully or a specified portion of the fees. If so, the lawyer fees will be paid by the conservatorship estate. Any portion of the lawyer's fees and costs that you cannot afford to pay are paid by the county.

The lawyer appointed by the court usually prepares and files a written report, including his or her recommendations for resolution of the matter before the court. Sometimes your conservator may disagree with a position being taken by your lawyer. If so, it may be possible to reach a compromise to settle the disagreement. If everyone involved cannot agree to a compromise, a judge may have to decide what is best. Recommendations by your court-appointed counsel are usually given great weight and consideration by the court.

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## The Conservatorship Court Process

Setting up a conservatorship is a long and complex process. Here is a brief description of the steps to give you an idea of what you should expect.

- **Starting the conservatorship.** You can request a conservatorship if you feel that you are no longer able to take care of your needs or finances. The process can also be started by the proposed conservator; your spouse or domestic partner; a relative or a friend of yours; 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 you and the proposed conservator, 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.
- **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 petitioner is low income, he or she may be able to ask the court for a fee waiver.
- **Informing the proposed conservatee.** The petitioner must have someone else personally deliver to you a citation and a copy of the petition. You have the right to know about and see the paperwork that has been filed.
- **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 your spouse or domestic partner and close relatives.
- **Investigation by a court investigator.** A court investigator will talk to you and others who may be familiar with your condition. The court will assess your estate for the cost of this investigation unless the court decides that the assessment would be a hardship for you.
- **Hearing.** You must go to the court hearing unless you are 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 you. Once the judge is ready to make a decision, he or she may grant or deny the conservatorship. If the judge grants the petition, an order appointing the conservator will be filed and Letters of Conservatorship will be issued. If there is an estate, a surety bond must be filed unless the court orders the conservatee's bank accounts to be frozen.

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## The Role of the Court Investigator

The court investigator gives neutral information about the case to the judge. He or she will talk to you throughout the court process, and you will have a chance to tell him or her about your concerns and wishes and to ask any questions you may have.

The investigator will call the proposed conservator and set up a visit with him or her and you. Sometimes, he or she will meet with both of you more than once. The investigator must also interview your relatives.

The court investigator will meet with you in a private interview and:

- Explain how the conservatorship will change your life.
- Explain what will happen at the hearing.
- Explain about your right to oppose the conservatorship, to have a lawyer, to have a different conservator, and to have a trial by jury if you want a jury to decide if a conservator is needed.
- Determine if you have the ability to understand or to give an opinion. IF the investigator determines that you do not have these abilities, he or she will decide if a lawyer should be appointed to represent you.
- Find out if you are willing and able to come to the hearing. The investigator is allowed to look at your confidential medical records.
- See if you are able to fill out an affidavit of voter registration.

After talking with you and the proposed conservator, and talking with your relatives about why the proposed conservatorship is needed (or not), the court investigator will write a confidential report for the court. The investigator will then send a copy of the report to the conservator and the conservator's lawyer, to you and your lawyer, to your spouse or domestic partner, and to your parents and children. In this report, the investigator will make recommendations to the judge about the case.

If a conservator is appointed, the court investigator stays involved. Six months after the appointment, the investigator will review the case again to make sure the conservator is fulfilling his or her responsibilities to you and that your rights are being protected. The investigator will review the case again after another 6 months, and every 12 months after that.

If the investigator thinks the conservator is acting in your best interests and the court agrees, the court can reduce the scope of the reports the investigator must write and file in later reviews, but the investigator must make a personal visit and interview you and must prepare and file at least a short status report every year after the first year. The court may order additional reviews as necessary or helpful to protect you.

If the investigator thinks there may be a problem after one of these reviews, he or she may ask the judge to appoint a lawyer for you. This may start the legal process to sanction or remove the conservator and either appoint someone else as successor conservator or end the conservatorship.

The investigator will also visit you and make a report if:

1. A petition for appointment of a temporary conservator is filed.
2. The temporary conservator wants to move you out of your home.
3. The conservator asks for exclusive authority to make medical decisions for you, especially if he or she is asking for special powers to take care of your needs because you have dementia.
4. The conservator wants to sell your home (or former home).
5. A petition for appointment of a successor conservator is filed and you cannot attend the hearing or refuse to attend the hearing on the petition.

The court investigator will explain these situations to you. He or she will then make recommendations to the court in a written report that will also be mailed to the conservator, your lawyer, and your spouse or domestic partner and other close relatives.

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### When You Can Ask to End or Change a Conservatorship

A conservatorship is usually a permanent arrangement. But, in certain cases, a conservatorship may be ended or the conservator may be changed.

- **You become able to handle your own affairs**

You may have had a conservator appointed while you recovered from a physical or mental condition that was temporarily disabling. For example, you may have been in a serious car accident that left you unable to handle your personal affairs or finances. After rehabilitation, you may have recovered and are now able to take care of things again.

In these cases, you, the conservator, a relative or friend of yours, or some other interested person can ask the court to end the conservatorship. The court may ask the court investigator to evaluate the case and your condition to see if the conservatorship should be ended. If the judge ends the conservatorship, the conservator will be released from his or her duties and you will no longer be under a conservatorship.

- **The court removes the conservator**

If you feel that the conservator is not doing his or her job, or is not able to do it, and your needs are not being met, you can ask the court to remove your conservator and appoint a new conservator. You or any of your relatives or friends may ask the court to remove and replace the conservator. If you make the request and you do not have your own lawyer, the judge will generally appoint one to file the petition for you.

There are other reasons why a conservatorship may end, like the conservator resigns as conservator in your case, the conservator dies, or you have no more assets (for a conservatorship of the estate). If you have no more assets and a conservatorship of the estate is ended for that reason, a conservatorship of the person will continue if you require that care and protection.

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