

A Caregiver's Guide to Conservatorship: What It Is and How to Get One

A court can appoint someone else to make financial and health decisions on behalf of a person who isn't capable of handling them

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Here are some more of the basics of what a conservatorship is, and how it works.

What is the purpose of a conservatorship?

A conservatorship is intended to safeguard the conservatee, the legal term for the person who is giving up control. In the case of an older person, the situation may be that “you have an adult who has no ability to care for themselves, or provide for their needs for housing, food and clothing, or to resist fraud,” explains [top family law attorney](#) Chris Melcher, a partner at Walzer, Melcher & Yoda in Woodland Hills, California. “And that is a persistent condition. They don’t have the capacity to protect themselves and make their own decisions, so now somebody else needs to step up.”

Usually, the conservatorship is needed because a person became incapacitated without leaving any advance directives, such as a power of attorney or a health care directive for health decisions, according to Moira S. Laidlaw, former chair of the Guardianship Committee of the Westchester County Bar Association in New York. “There is a vacuum of authority,” she explains.

Are there different types of conservatorships?

For someone who’s unable to make any sort of decisions for themselves, a court may set up a full conservatorship, in which the conservator essentially assumes control over almost everything, including the ability to sign a contract. “We see this a lot with people with elderly parents who have dementia and can no longer manage, and haven’t done anything to protect or provide for themselves,” Burda says.

In other instances, a court may opt for a limited conservatorship in which the conservator manages only health care decisions or finances while the conservatee maintains control over matters they’re still able to handle on their own, according to Burda.

How does someone get to be a conservator for another person?

John Neil Wood, an attorney and founder of Grant Park Legal Advisors, a Chicago-area firm, says, “I typically recommend that the family has a discussion about who will take on this

responsibility, and discuss with them the level of liability and responsibility they are assuming prior to applying for the guardianship.”

But in families that don’t get along well enough to do that, one person may step up and file a petition and other legal documents with the court. In some instances, there may even be competing petitions, according to Moira Laidlaw. That leaves it up to the judge to decide who gets the job.

It's also possible to have multiple conservators. “Sometimes one family member will be the conservator for financial matters and another member of the family will serve as the conservator for personal issues like health care,” explains Melcher.

It’s not necessarily easy to get approval. “We are, by definition, taking away the rights of one adult and putting them in the hands of another,” says Melcher. “There is an inherent risk of abuse when we do that, so the court needs to be convinced that the conservatee is unable to care for themselves, and that we need this drastic remedy.”

Recently, music legend Cher, 77, failed in a bid to obtain temporary emergency conservatorship over her adult son Elijah Blue Allman, 47, noting that he has “severe mental health and substance abuse issues.” The court denied the petition, citing “insufficient evidence,” though more hearings are scheduled.

The court also needs to be convinced that the person seeking to be the conservator is trustworthy, capable and willing to take on the job, according to Melcher.

Who makes sure that a conservator manages a person’s affairs properly?

The courts keep an eye on what conservators do. They’re generally required to file a report at least once a year, in which they account for whatever spending and other financial actions they’ve taken, according to Burda.

The court that granted the conservatorship also has the power to take action against a conservator who doesn’t do the job to the court’s satisfaction. For example, a judge can order a conservator to post a bond equal to the value of the person’s estate, or whatever amount the court thinks is appropriate. And a conservator can be removed for abuses, such as writing checks to cover his or her own personal expenses, says Burda.

What are the advantages and disadvantages of conservatorships?

On the plus side, a conservatorship means that there's someone in charge of an incapacitated person's affairs to look after their interests. But there are plenty of downsides as well. Once a conservator goes through the arduous legal process of setting up the conservatorship, managing another person's financial affairs requires a lot of meticulous work, and making health care decisions can be emotionally taxing, explains MacKenzie A. Hyde, an attorney in the Chicago office of law firm Clark Hill. "It's a very thankless job," she says. "You have fiduciary obligations that you have to carry out, and you're going to have other people nitpicking what your decisions are."

Are there alternatives to a conservatorship?

Most people can avoid ever needing a conservator if they put the right measures in place in advance. Burda says everyone should do a comprehensive estate plan that includes a durable power of attorney, which designates someone to make decisions for you in the event that you're incapacitated for whatever reason. That way, "if tomorrow I'm in an auto accident and no longer competent to execute legal documents, my spouse has the right to act on my behalf and manage everything," Burda explains. Better yet, it's cheaper and faster than going through a complex court proceeding to appoint a conservator.

But even with such planning, unexpected problems can arise. In the case of the Lenos, for example, the *Los Angeles Times* reported that Jay Leno needed a conservatorship to make changes in a living trust and other estate plans to guarantee that his wife would be provided for in the event that he dies before she does.

How to Avoid Conservatorship Strife

Making a big financial decision for your conservatee? Attorney Joan Burda says that in many cases, a family discussion and consensus should suffice. But if family members are not on the same page, Burda says that a smart conservator will get court approval before making any major move, even in states where it isn't required.

Why? It's a way to give yourself some protection, Burda explains. "If I'm a conservator, and I want to sell Mom's condo, one of my siblings could come back and say, 'Oh, you could have gotten a lot more money than that,' or 'You just took all the money and you had no right to do

that.' That's why I recommend that conservators always go back to the court and say, 'Judge, this is what I want to do.' " That way, if the conservator is challenged by family members, he or she can show them a court order confirming that the judge scrutinized the sale and approved it.

Patrick J. Kiger is a contributing writer for AARP. He has written for a wide variety of publications, including the Los Angeles Times Magazine, GQ and Mother Jones, as well as the websites of the Discovery Channel and National Geographic.