



Conservatorship Information for the Approaching 18 Years Adult with PWS

Until such time as there is treatment to manage the hyperphagia (food drive) symptom caused by PWS, adults with PWS may not safely live independently. Those who have tried have inevitably gained unsafe amounts of weight or have died before moving back to an environment where food is once again safe.

The law provides that when persons reach the age of 18 years, they are considered adults capable of making all legal decisions for themselves, including where and how they live, contracts to which they may bind themselves (such as credit cards), and all medical decisions. Because the decision-making skills and judgment of adults with PWS are frequently faulty, and because for many the food drive overrules and interferes with the ability to manage their behavior, it is recommended that adult with PWS be conserved by a parent or trusted provider. The process of planning for conservatorship should begin when the child is about 17 years old so that court filings occur just prior to the child's 18th birthday.

Consider the scenario where 18 year old daughter or son with PWS decides that s/he no longer wishes to live at home, no longer needs to be deterred by refrigerator and pantry locks that restrict her access to food. S/he announces this on the way out the door – with no money, clothing or toiletries, no medical insurance card, no mode or means of transportation, and no place to live. You call your local agency for help, maybe your Regional Center case worker or the police department, and you are told that since your child is 18 years old, it doesn't matter that s/he has a developmental disability or reduced capacity for caretaking and that you fear for his or her safety – legally there is *nothing* you can do to bring your child home.

The process of obtaining conservatorship can be a conflicted and painful one for both parent and child who dream of raising or becoming an independent, self-sufficient and a productive member of society. Conservatorship removes the first two components of adulthood from our child's life, but it absolutely doesn't need to impact the latter. Indeed, the act of conservatorship provides for the safety and well-being of the adult child so that he or she may safely strive to reach his or her life goals.

California Conservatorships

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BACKGROUND

Definition. A conservatorship is used in California where a person cannot handle their own financial matters or take care of themselves physically, so another person is appointed by the Court to handle these matters. Since 1981, in California a guardianship can only be obtained for someone under the age of 18. Other states, though, use the term "guardianship" for what California now calls a conservatorship.

Terminology. A conservatorship must be established by a court. The person needing the help is called the "conservatee" and the person who receives authority to handle financial, medical and/or other matters for the person needing the help is the "conservator".

Types of Conservatorships. There are two basic types of conservatorships, a conservatorship of the person and a conservatorship of the estate. Often one conservator fills both roles, but it does not have to be that way.

Conservator of the Person. A conservator of the person makes sure that the conservatee has appropriate food, clothing, shelter, healthcare, social contact and sources of enjoyment.

Conservator of the Estate. A conservator of the estate handles the conservatee's finances. A conservator of the estate must use the conservatee's money and other assets to support (and educate, if appropriate) the conservatee and any dependents the conservatee has.

If the appropriate court order is obtained, the conservator can handle not only the conservatee's personal finances but his/her business matters as well.

THE PROCESS

Starting the Process. A conservatorship is started by filing papers with the Probate Court and giving copies to the proposed conservatee and his/her close relatives. [The precise procedure will vary to some degree from jurisdiction to jurisdiction. The person seeking the appointment of a conservator files a petition with the probate court for the jurisdiction where the allegedly legally incapacitated person resides. This petitioner is often a relative, an administrator for a health care facility, or other interested person. A petition is ordinarily accompanied by medical affidavits or other sworn statements which evidence the person's incapacity, and either identifies the person or persons who desire to be named conservator or requests the appointment of a conservator.]

Obviously, this can be a painful process for the conservatee, who is being required to give up rights to manage his/her finances, make his/her own medical decisions, etc. Still, sometimes a conservatorship is unavoidable.

Court Investigator. A court investigator must talk with the proposed conservatee and others who may know something about the situation. [The court will arrange for any necessary evaluation of the allegedly legally incapacitated person. Often, this will involve the appointment of a "guardian ad litem," a person who is appointed to provide an independent report to the court on behalf of the allegedly legally incapacitated person. If appointed, the guardian ad litem will meet with the allegedly incapacitated person, inform that person of his or her legal rights, and report back to the court on the person's wishes. The guardian ad litem may also speak to the petitioner, to health care providers, and to other interested individuals in order to provide the court with full information about the allegedly incapacitated person's condition and prognosis.]

[If the allegedly incapacitated person consents to the petition, or is unable to respond to inquiries due to disability, the court will hold a hearing at which witnesses will provide sworn testimony to support the allegations in the petition. If the evidentiary basis is deemed sufficient, the conservator will be appointed.]

[If the allegedly incapacitated person contests the appointment of a conservator, a trial is scheduled during which sworn testimony will be given, and at the conclusion of which the judge will decide if the petitioner met the requisite burden of proof for the appointment of a conservator. The allegedly incapacitated person is ordinarily entitled to appointed counsel, if unable to afford a private attorney.]

The Hearing. A hearing date is scheduled and at the hearing the judge decides whether a conservator will be appointed and, if so, who that will be.

Unless the proposed conservatee is unable to attend for medical reasons, the proposed conservatee should be present at the hearing, as the Judge will often want to question them.

Note that it is possible for someone else, usually a family member, to object to the proceeding or propose a different conservator.

[If a conservator is appointed, the judge will issue the conservator legal documents (often called "letters of authority") permitting the conservator to act on behalf of the legally incapacitated person.]

Inventory and Appraisal. Within 90 days of the date the Judge signs the Order Appointing Probate Conservator, the conservator must file a report with the Court listing the assets that the conservatee owns. More specifically, the conservator prepares an Inventory and Appraisal form. If there are assets other than cash, the conservator must forward the Inventory and Appraisal to the probate referee, who is appointed by the Court. The probate referee will appraise the non-cash items, complete the Inventory and Appraisal by inserting the value of those items, and return

it to the conservator, who must file it with the Court. The probate referee usually takes four to six weeks to return the form.

The estate is charged a fee for the appraisal, generally 1/10th of 1% of the total value of the conservatee's estate, with a maximum fee of \$10,000. The probate referee may also be able to recover expenses, such as mileage, in addition.

Court Investigations. Once a conservatorship is in place, the Court conducts periodic investigations to confirm that the conservatorship is still needed and that the conservatee is being treated appropriately.

Bond and Periodic Accounting. If the conservator is handling the conservatee's finances (which is generally the case), the conservator must post a bond and must provide detailed accounts periodically to the Court that list all income and expenditures.

Amount of Bond. The amount of the bond depends on the assets that the conservatee has and his/her annual income, as well as whether a professional bonding company (versus family members or friends) is providing the bond. Note that most bonding companies will not issue a bond unless an attorney is handling the conservatorship proceedings.

Status Reports About the Conservatee. Often the conservator must also prepare periodic status reports stating how the conservatee is faring and what the conservator is doing in regard to his/her duties.

Cost. Usually the cost of the conservatorship comes out of the conservatee's income or other assets.

Fees and Reimbursements for the Conservator

Expenses. Generally, the conservator is entitled to reimbursement for reasonable expenses incurred on behalf of the conservatee, including expenses to establish the conservatorship and sometimes money spent supporting the conservatee prior to the conservatorship.

With the exception of Court filing fees and premiums on the bond, the conservator must obtain Court approval before receiving reimbursements from the conservatee's estate.

It is crucial for the conservator to keep receipts and records of all expenses (and reimbursements).

The conservator is allowed to hire help as needed – for example, an accountant – as long as the expense is reasonable in comparison with the size of the conservatee's estate. Generally the conservator cannot be reimbursed for postage, photocopies, mileage or the cost of trips to court.

Compensation for Time. It is crucial that a conservator who wishes to receive compensation for his/her time keep a detailed written record of the time spent on the conservatorship, indicating the date, amount of time and the work done on an entry-by-entry basis.

Courts usually allow a family member to recovery only for time spent on managing the finances of the estate, and not for any time spent acting as a family member (such as visiting the conservatee) or for acting as a conservator of the person.

Courts may not allow compensation for time if little time has been spent on financial matters or if the conservator has not followed court procedures, including filing accountings on time. Some courts have schedules that set out the compensation that a conservator may receive for his/her time, often a percentage of the conservatee's estate.

The conservator may only petition the Court for compensation for time after the later of both: 90 days after the Letters of Conservatorship were issued; and when the Inventory and Appraisal is filed.

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