

LINDA S. DURSTON

Estate Planning & Elder Law

Conservatorships & Guardianships

Conservatorships and guardianships are protective proceedings that result in court orders that entrust important civil rights and responsibilities of persons who lack the capacity to act in their own best interest to another who will do that for them under court supervision.

Children (persons under age 18) lack capacity because of their age to do certain things. A child under age 18 cannot legally take charge of assets of more than \$5000 without a court order. appointing a guardian of the child's estate. The guardian, once appointed, then has needed authority to collect and manage the funds for the child until he or she reaches the age of 18. Similarly, if a child's parents die or become unable to take care of the child, a grandparent or other appropriate person will need to obtain guardianship of the person in order to make medical and educational decisions for the child and, among other things, and to determine where the child will live.

Adults may lack capacity because they are born with or later acquire disabilities that substantially or completely prevent them from being able to provide properly for their personal needs for physical health, food, clothing, or shelter or to manage their own financial resources or resist fraud or undue influence. Hence, a conservatorship may become necessary for an elder who did not do estate planning while they had mental capacity and now has advanced Alzheimer's disease or other dementia.

In California, there are several kinds of conservatorships. There are "limited" conservatorships for adults who have developmental disabilities. There are standard probate conservatorships for persons who require conservatorship for most any other reason besides a developmental disability, or if the developmental disability is so severe that the individual lacks capacity to perform all of tasks necessary to provide properly for his or her personal needs, or to manage his or her financial resources. Limited and standard conservatorships may be "of the person" and/or "of the estate." There are temporary and general conservatorships. Finally, there are so-called "LPS" conservatorships for the "gravely disabled." Which kind of conservatorship is appropriate in a given case is specific to the individual circumstances.

Because the establishment of conservatorship or a guardianship results in the transfer of fundamental civil rights from one person to another, these protective orders are difficult to establish and, once established, are closely supervised by the courts. They are difficult to establish because they require many procedural

steps and factual showings. The courts supervise conservatorships and guardianships by requiring the guardian or conservator of the estate to file accountings with the court one year after the orders become effective (“after letters are issued”) and every two years after that. The accountings must show all assets received, and all distributions paid out. The court also requires that the guardian or conservator of the estate be bonded for even more than the value of the estate. The courts separately require generally annual reports on the status of the personal well-being of the protected person.

Because conservatorships and guardianships are difficult to establish and maintain, they are in many respects an action of last resort. Further, these protective orders will not necessarily solve every problem. That being said, conservatorships often are necessary to provide for persons with severe disabilities and/or to protect them from themselves or others.

If you think that a conservatorship or guardianship of the person and/or estate of an individual with limited capacity may be appropriate, please give us a call to discuss your situation and assess your options.

