

Limited Conservatorships and Special Needs Trusts

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Benefits

➤ Peace of Mind

➤ Security

➤ Protection

➤ Costs



Limited Conservatorships and Special Needs Trusts

- ☞ What is a Conservatorship?
- ☞ Establishing a Conservatorship
- ☞ What is a Limited Conservatorship?
 - ☞ When is a Limited Conservatorship needed?
 - ☞ Why is a Limited Conservatorship needed?
- ☞ Ending a Limited Conservatorship
- ☞ Other Types of Conservatorships
- ☞ Alternatives to Conservatorships
- ☞ Assembly Bill 1663



Limited Conservatorships and Special Needs Trusts

- ☞ What is a Special Needs Trust?

 - ☞ Government Benefits

 - ☞ Supplemental Security Income (“SSI”)

 - ☞ Medi-Cal

 - ☞ In-Home Supportive Services

- ☞ Allowable Expenses

- ☞ Types of Special Needs Trusts

 - ☞ First Party Special Needs Trusts

 - ☞ Third Party Special Needs Trusts

- ☞ Working as a Team

- ☞ CalABLE Accounts



MORTENSEN & REINHEIMER, PC

A PROFESSIONAL LAW CORPORATION

ESTATE PLANNING, CONSERVATORSHIPS, PROBATE & LITIGATION

What is a Conservatorship?

- A court proceeding that is meant to assist individuals with their personal or financial needs.
- Best interest of the conservatee.
- Least restrictive means.



What is a Conservatorship?

➤ Conservator:

- The person who assists the individual who is in need of a conservatorship.

➤ Conservatee:

- The person who requires assistance in his/her personal or financial needs.



What is a Conservatorship?

➤ Conservator of the Person

- Manages and monitors personal needs
 - Living situation
 - Health Care
 - Meals
 - Clothing
 - Personal Care
 - Housekeeping
 - Transportation
 - Recreation



What is a Conservatorship?

➤ Conservator of the Estate

- Manages and monitors finances
 - Collect income
 - Devise budget
 - Pay bills
 - Invest
 - Enter into contracts
- Record Keeping
- Inventory and Appraisal
- Bond
- Accounting



What is a Conservatorship?

➤ Conservatee's Rights

- Receive and control salary
- Make or change a will
- Marry
- Receive personal mail
- Receive visits from family and friends
- Be represented by a lawyer



What is a Conservatorship?

➤ Conservatee's Rights

- Ask to change conservator
- Ask to end conservatorship
- Vote
- Control personal spending money
- Make own medical decisions
- Enter into business transactions



Establishing a Conservatorship

- Qualifying to serve as conservator
- Filing the petition and accompanying documents
- Notice
- Court Investigator
- Regional Center report (limited conservatorship)



Establishing a Conservatorship

- Declaration of Capacity
- Appearing at hearing
- Appointment
- Bond
- Order and Letters



Establishing a Conservatorship

➤ What can't the conservator do?

- Gift property
- Borrow funds
- Compensation
- Charge interest on loans
- Commingle assets



What is a Limited Conservatorship?

- A limited conservatorship may be set up for adults with developmental disabilities who cannot fully care for themselves or their property.
- Goal is to maximize independence and self-reliance.
- Powers must be specifically ordered.
- Report from Regional Center.



What is a Limited Conservatorship?

➤ Developmental Disabilities:

- A disability that originates before the age of 18, is expected to continue indefinitely, and constitutes a substantial handicap.
- Examples include:
 - Autism Spectrum Disorder
 - Intellectual Disability
 - Epilepsy
 - Cerebral Palsy



What is a Limited Conservatorship?

➤ Limited Conservator of the Person

- Manages and maintains personal needs:
 - Deciding residence
 - Access to confidential records
 - Consent to medical treatment
 - Assist in education decisions
 - Restrict right to make contracts
 - Marriage
 - Control social and sexual contacts



What is a Limited Conservatorship?

➤ Limited Conservator of the Estate

- Managing and maintaining finances:
 - Collect income
 - Pay bills
 - Invest
 - Locate and take control of assets
- Inventory and Appraisal
- Bond
- Accounting



When is a Limited Conservatorship needed?

- When the child reaches the age of majority or 18.
- The child is unable to provide for his/her personal needs.
- The child is unable to provide for his/her financial needs.



Why is a Limited Conservatorship needed?

- To maintain behavioral services.
- To monitor and manage the child's finances.
- To assist in medical and education decisions.
- To facilitate and ensure the child receives maximum self-reliance and independence.



Ending a Limited Conservatorship

- The limited conservator dies.
- The limited conservatee dies.
- A general conservator is appointed.
- A judge ends the limited conservatorship.



Other Types of Conservatorships

➤ General Conservatorships

- A general conservatorship is established for adults or younger people who have been deemed incapacitated and who cannot manage their own finances or care for themselves.
- General powers are provided unlike Limited Conservatorships.



Other Types of Conservatorships

➤ General Conservatorships

- Conservator of the Person:
 - Living Situation
 - Health Care
 - Meals
 - Clothing
 - Personal Care
 - Housekeeping
 - Transportation
 - Recreation



Other Types of Conservatorships

➤ General Conservatorships

- Conservator of the Estate:
 - Collecting income
 - Paying bills
 - Investing
- Inventory and Appraisal
- Bond
- Accounting



Other Types of Conservatorships

➤ Temporary Conservatorships

- A Temporary Conservatorship is established in order to meet conservatee's immediate needs.
 - Temporary conservator of the Person
 - Temporary conservator of the Estate
- A permanent conservatorship is still required.



Other Types of Conservatorships

➤ Lanterman-Petris-Short (“LPS”) Conservatorships

- LPS Conservatorships are established for the following conservatees:
 - Gravely disabled
 - In need of treatment but are unwilling or incapable of accepting it voluntarily
 - Are recommended for conservatorship by the professional in charge of LPS evaluation or treatment facility



Alternatives to Conservatorships

- Power of Attorney for Financial Matters
- Power of Attorney for Health Care
- Living Trust
- Assignment of Education Decision Making Authority
- Representative Payeeship



Assembly Bill 1663

- Effective January 1, 2023
- Further independence and self-reliance to individuals with developmental disabilities.
- Supported Decisionmaking
 - Individual chooses one or more people they trust as supporters to help them understand, make, communicate, implement, or act on, their own choices.
 - Individual may choose to enter into a supported decisionmaking agreement with one or more chosen supporters.

What is a Special Needs Trust?

- A Special Needs Trust allows for a disabled beneficiary to continue receiving his/her government benefits while also benefiting from the funds held in the trust.
- Established to maintain disabled beneficiaries' specific needs, lifestyles and/or future in the event the parent or guardian passes away.



What is a Special Needs Trust?

- Take some time to decide on your trustee.
 - An individual you trust.
 - An individual who knows and understands the beneficiary.
 - An individual who cares about the beneficiary.
 - An individual who understands public benefits.
 - Advocate Committee/Trust protector?

- Letter of Intent
 - Provides vital information to future caregivers



What is a Special Needs Trust?

➤ Advantages

- Preserves the eligibility of the disabled beneficiary for “needs-based” government benefits, while simultaneously allowing for the beneficiary to benefit from trust distributions to supplement public benefits and address his/her special needs.
- Can be used to receive inheritance funds, gifts, or proceeds from a settlement on behalf of the disabled person, in order to avoid disqualifying from government benefits.
- Assets held in the Trust cannot be reached by creditors.



What is a Special Needs Trust?

➤ Qualifications:

- Person has a developmental disability
- Person is receiving or is eligible for government benefits
 - Supplemental Security Income (“SSI”)
 - Medi-Cal
 - In-Home Supportive Services (“IHSS”)
- Third party wants to make a provision for the disabled person (Third Party Special Needs Trust)



Government Benefits

➤ Entitlement Benefits

- Social Security Disability Insurance (“SSDI”)
 - Disabled worker
 - SSDI income will reduce SSI income
- Medicare

➤ Needs-Based Benefits

- Supplemental Security Income (“SSI”)
 - Blind
 - Aged
 - Disabled
- Medi-Cal
- In-Home Supportive Services (“IHSS”)

Supplemental Security Income (“SSI”)

- Pays monthly for food and shelter
 - Food
 - Shelter
 - Mortgage (including property insurance)
 - Real Property Taxes (less any tax rebate/credit)
 - Rent
 - Heating fuel
 - Gas
 - Electricity
 - Water
 - Sewer
 - Garbage Removal
- Automatically receive Medi-Cal if eligible for SSI

Supplemental Security Income (“SSI”)

➤ Rate as of 2024

- Maximum federal portion - \$943.00
- Maximum state portion - \$239.94
- Total as of 2024 - \$1,182.94

Supplemental Security Income (“SSI”)

➤ Qualifications

- Disability criteria
 - Individual cannot engage in “Substantial Gainful Activity” due to physical and/or mental impairment that lasted or can be expected to last for at least 12 months, or result in death
 - Individual who earns over \$1,550 (gross) as of 2024 is engaged in Substantial Gainful Activity
- Limited Resources
- Limited Income

Supplemental Security Income (“SSI”)

➤ Resource limit

- Resource can be cash or property
 - Non-resource
 - House (as principal residence)
 - Household goods
 - Clothes and accessories
 - 1 vehicle
 - Items related to disability (e.g., wheelchair)
 - Burial plot
 - \$1,500 set aside for burial expenses
 - All term life insurance
 - Assets in Special Needs Trust
- Single - \$2,000
- Married - \$3,000

Supplemental Security Income (“SSI”)

➤ Limited Income

- Earned Income
 - Examples: wages, net income from self-employment
 - Result: first \$65 is free, then benefit is reduced by \$1 for every \$2 earned
- Unearned Income
 - Examples: gifts, inheritance, annuity, pensions, unemployment
 - Result: first \$20 does not count, then benefit is reduced \$1 for every \$1 received
- In-Kind Support and Maintenance
 - Examples: food, rent, mortgage, real property taxes, basic utilities
 - Result: benefit is reduced by \$1 for every \$1 earned
 - Maximum reduction is \$334.33 as of 2024

Medi-Cal

➤ Medi-Cal

- Pay for “medically necessary” medical services
 - Inpatient/outpatient hospital services
 - Home health services
 - Physical services
 - Laboratory and X-ray services
 - Long-term/nursing home care
- Asset limit
 - Eliminated on January 1, 2024
 - Application will not ask for asset information
 - Application will still consider income information though

In Home Supportive Services

- In Home Supportive Services (“IHSS”)
 - Housecleaning
 - Meal preparation
 - Laundry
 - Grocery shopping
 - Personal care services
 - Accompaniment to medical appointments

Allowable Expenses

➤ Generally used to pay for:

- Personal care
- Vacations
- Home furnishings
- Out-of-pocket medical/dental expenses
- Education
- Recreation
- Vehicle
- Physical rehabilitation



Types of Special Needs Trusts

- First Party Special Needs Trusts (Self-Settled Trusts)
- Third Party Special Needs Trusts



First Party Special Needs Trusts

- Must be under 65 years old
- Trust is funded by beneficiary's assets
 - Assets may be acquired by:
 - Personal injury award
 - Retirement plan
 - insurance policy
 - Inheritance
- Court supervised if individual lacks capacity
- Medi-Cal Payback
 - Amounts remaining in trust once terminated are paid back to Medi-Cal
- Irrevocable

Third Party Special Needs Trusts

➤ Third Party Special Needs Trusts

- Trust is funded by someone other than the beneficiary
 - Usually by a family member or close friend
 - Assets may be acquired by:
 - Inheritance left to Special Needs Trust
 - Life insurance left to Special Needs Trust
 - Gifts made to Special Needs Trust
- No court supervision required
- No Medi-Cal payback
- Irrevocable or revocable



Working As A Team

- Trustee of Special Needs Trust
 - Family members
 - Friends
 - Professionals
 - Conservator/guardian
 - Conservator of the Person
 - Making daily life decisions
 - Conservator of the Estate
 - Making financial decisions
 - Agent under Power of Attorney
 - Managing non-trust assets
 - Agent under Health Care Directive
 - Making medical decisions
 - Regional Center Case Managers
 - Involving care decisions

CalABLE Accounts

- California Achieving A Better Life Experience ("CalABLE")
 - Department of US Treasury
 - Funds not counted as available resource for SSI or Medi-Cal
 - Disability present before age 26
 - \$100,000 maximum
 - \$18,000 contribution per year
 - Beneficiary can only have 1 CalABLE account

CalABLE Accounts

- No Medi-Cal payback
- Qualified disability expense
 - Education
 - Housing
 - Transportation
 - Employment training and support
 - Health
 - Assistive technology and personal support services
 - Prevention and wellness

Thank You!!

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