

# Limited Conservatorships and Special Needs Trusts

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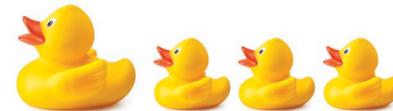
# Benefits

➤ Peace of Mind

➤ Security

➤ Protection

➤ Costs



# Limited Conservatorships and Special Needs Trusts

- ☞ What is a Conservatorship?
- ☞ What is a Limited Conservatorship?
  - ☞ When is a Limited Conservatorship needed?
  - ☞ Why is a Limited Conservatorship needed?
- ☞ Other Types of Conservatorships
- ☞ Alternatives to Conservatorships
- ☞ What is a Special Needs Trust?
- ☞ Types of Special Needs Trusts?



# 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:

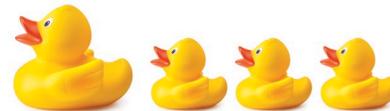
- A disability that originates before the age of 18, is expected to continue indefinitely, and constitutes a substantial handicap.
- Examples include:
  - Autism Spectrum Disorder
  - Intellectual Disability
  - Epilepsy
  - Cerebral Palsy



# 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



# 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.
  - Trust protector?



# 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
  - Social 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)



# What is a Special Needs Trust?

➤ 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)

- Trust is funded by beneficiary's assets
- Assets may be acquired by:
  - Personal injury award
  - Retirement plan
  - insurance policy
  - Inheritance
- Irrevocable



# Types of 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
- Irrevocable or revocable



# Thank You!!

➤ Questions?

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