

Mental Health Conservatorship

Mental Health Conservatorships

The Probate Court Judge oversees mental health conservatorships and related mental health proceedings. A mental health conservatorship is different from a probate conservatorship. It is used only for people who have a psychiatric disorder so severe that it prevents them from providing for their most basic personal needs such as food, clothing, and shelter. The legal term is gravely disabled.

The purpose of mental health conservatorships is to provide individualized treatment, supervision, and living arrangements for people who are seriously mentally ill while still protecting their individual rights. Mental health conservatorships, which are sometimes called LPS conservatorships because they are governed by the Lanterman-Petris-Short Act, can involve confinement in a locked psychiatric facility, which means the person is deprived of personal liberty. Therefore, there are strict legal procedures and laws that must be followed by doctors and hospitals and which involve review and monitoring by the Probate Court.

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Starting a Mental Health Conservatorship

Family members or other private parties cannot start a mental health conservatorship. Only the professional treatment staff

at the hospital where the person is being treated can begin the process. The first step is to request an investigation by the Office of the Public Conservator, which is a division of the Department of Aging and Adult Services in San Francisco. If the investigation by the Public Conservator agrees with the professional staff of the psychiatric facility, the Public Conservator will formally request the Probate Court to establish a temporary mental health conservatorship and eventually, a general conservatorship. The formal request is called a petition. The person who is affected is legally called a proposed conservatee and must receive written notice of the temporary conservatorship at least five days before it takes place. The Probate Court also appoints an attorney, generally the Public Defender's Office, to represent the person.

A temporary conservatorship cannot last longer than 30 days. At the end of 30 days, the Probate Judge considers the petition for the general conservatorship.

Temporary Conservatorship

During the 30-day period of temporary conservatorship, the Public Conservator is required to prepare a comprehensive written report to the Court. The report must contain all relevant aspects of the proposed conservatee's medical, psychological, financial, family, vocational and social condition, and information obtained from the person's family members, close friends, social worker or main mental health therapist. The Public Conservator also must investigate all possible alternatives to conservatorship. If the conservatorship investigation results in a recommendation for conservatorship, the Public Conservator also makes recommendations as to what specific powers should be denied to the person. The most important recommendation is whether or not the person can keep the right to give or withhold consent to psychiatric treatment, including medication. A copy of the

investigator's report must be furnished to the person recommended for conservatorship.

Hearing on Petition for General Conservatorship

At the hearing on the petition for general conservatorship, evidence supporting the petition is presented by attorneys from the District Attorney's Office. If the person objects to the petition, a psychiatrist or psychologist must testify. The person is represented by counsel, and may testify or call others to testify. On the basis of the testimony, together with the report of the conservatorship investigator, the Judge will grant or deny the petition, or continue the proceeding to a later date. The hearings and all psychiatric records related to the proceedings are confidential.

If the petition for general conservatorship is granted, the Judge will appoint a conservator and determine which, if any legal rights, will be removed from the person. The Probate Judge may order the conservator to place the conservatee in a specific setting to ensure that the placement is the least restrictive appropriate setting. In San Francisco, the powers granted to the mental health conservator are for the person only, not for assets such as bank accounts or property. A probate conservator can be appointed to handle any assets. A mental health conservatorship expires at the end of one year, but may be renewed year-by-year if the treating medical team makes a formal request to the Probate Court to continue the conservatorship and the Judge determines it is necessary. The conservatee is entitled to a full evidentiary hearing and legal representation on the renewal petition as well.

After a General Conservatorship is

Established

During the period of the general conservatorship, the conservatee may petition the Court at any time for a hearing to challenge the conservatorship, on the basis that he or she no longer meets the legal criteria for conservatorship. The conservatee also may petition the Court for a hearing to contest any rights denied or powers granted under the conservatorship. The Court maintains ongoing supervision over the conservatorship, and frequently makes decisions as to whether the conservatee is receiving appropriate treatment in ways that are least restrictive of the personal liberty of the conservatee. The Court also makes decisions as to whether the conservatee is capable of giving or withholding consent to various forms of medical and psychiatric treatment.

Other Psychiatric Proceedings in Probate Court

In addition to mental health conservatorships, the Probate Court handles a range of other psychiatric proceedings, including writs of habeas corpus for persons who are civilly committed to a hospital but not on conservatorship. Other proceedings, which can be brought to the Probate Judge for a decision, include petitions to administer medical treatment to persons without a conservator, and petitions for the commitment of developmentally disabled persons to state hospitals. The law provides that the person subject to the proceedings is provided with an attorney.