Conservators of Adults

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In the United States, all adults are considered capable of handling their own affairs unless a Judge determines otherwise. This legal arrangement is called a conservatorship. Conservatorships are established for impaired adults, most often older people. Adults who are developmentally disabled or the victims of a catastrophic illness or accident also may have a conservatorship.

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When Conservatorship is Necessary

Establishing a conservatorship is a formal legal proceeding and involves several steps. Some adults who are concerned about possible future mental and physical incapacity decide to establish a power of attorney or a trust, in part so they can avoid the court action. They choose an individual or an institution to make decisions for them if they become impaired. These are private arrangements and must be made while the person has full mental capacity. In California, courts do not routinely monitor powers of attorney or trusts. Most people do not make these arrangements probably because it is difficult to think about becoming incapacitated mentally or physically. But it happens, especially to people over 75 years of age. For those who have not made prior arrangements, or if the person handling the power of attorney or trust is incapable or dishonest, a conservatorship may become

necessary.

Conservatorship Scenarios

There are many common situations in which the Court is requested to appoint a conservator. According to the National Center on Elder Abuse, most elder abuse and neglect in this country are committed by family members (http://www.elderabusecenter.org/). In the following situation, a grandson took advantage of his grandfather. There are many other situations in which a conservatorship is filed. A catastrophic illness or accident can befell an adult of any age lead to mental and/or physical incapacity. The many chronic conditions that can accompany aging may incapacitate an adult to the point where it is impossible to carry out activities of daily living or handle even a bank account.

After a Conservatorship is Established

Management of Wealth and Property

When a conservatorship is established, the Judge will require that a bond be obtained for the liquid assets and annual income in the person's estate. Liquid assets include bank accounts and stocks. A bond is like an insurance policy. If the conservator mishandles the money or takes it, the person in conservatorship can be reimbursed.

The Judge also schedules the case for Court monitoring of the finances and property of the person in conservatorship as well as his or her welfare. The law requires that an Inventory and Appraisal of all assets be filed within 90 days of the appointment of the conservator. The conservator must also file a General Plan for the conservatorship. If the conservatee has any real property, the conservator must record evidence of the

conservatorship with The Recorder of the City and County of San Francisco.

One Year Review

One year after the appointment of the conservator and every two years thereafter, an accounting of the assets, including the income and the expenditures must be filed with the Court. The accounting is reviewed in detail by a probate examiner. An investigator personally interviews the individual in conservatorship periodically and determines if the conservator is acting properly.

Non-Family Conservators

There are times when family members are unavailable or incapable of serving as conservators. Occasionally, the person who is thought to need a conservator does not want a family member to be the conservator. In those situations, there are agencies and individuals that can serve. The Public Guardian is an agency of the City and County of San Francisco and is the largest non-family conservator. There are also non-profit agencies that have complied with the law and can be appointed to serve as conservators. In addition there are individuals who are available to serve. They are called private professional conservators. As of July 1, 2008, they must be licensed by the State of California and meet ongoing educational requirements. All professional conservators are expected to keep a case and provide services even if the money runs out, especially if they have been appointed to serve as conservator of the person.

All conservators and attorneys in a conservatorship case are entitled to request the Court for fees for their work. The fees are carefully reviewed and granted by the Probate Court only if they have been properly justified. Conservators and attorneys cannot take money without a formal court order.

Those Most in Need of Conservatorship

Conservatorships affect mainly older people, especially those over 85 years of age. Coincidentally, the fastest growing age group in the United States is the one over 85 years of age. In California, that age group will increase by 143 percent between 1990 and 2020. Some counties will experience even higher rates, up to 400 percent. The influence of the 85 and older age group will emerge most strongly between 2030 and 2040 as the first of the baby boomers reaches 85 years of age (http://www.aging.ca.gov). With the right genes, healthy living, and luck, most people will escape being incapacitated. However, many San Franciscans will have impairments and will need help with daily living. Most likely the number of conservatorships will increase over time. Fortunately, the California legislature has mandated many court safeguards for those who need conservatorships.