



COUNTY OF FRESNO
OFFICE OF THE PUBLIC GUARDIAN



COMPARISON OF PROBATE AND LPS CONSERVATORSHIPS

LPS CONSERVATORSHIP

PROBATE CONSERVATORSHIP

Purpose:

- 1) To protect the legal rights of the mentally ill or chronic alcoholic.
- 2) To enable mental health care providers to provide involuntary treatment for the mentally ill or chronic alcoholic.

- 1) To protect persons unable to provide for their own needs or resist undue influence.
- 2) To ensure their proper care and treatment.
- 3) To conserve and or recover assets of the conservatee and to manage their financial affairs.

Criteria:

Gravely disabled as a result of a mental illness or chronic alcoholism and unable to provide for basic needs of food, clothing or shelter.

Unwilling or incapable of accepting treatment voluntarily.

Unable to properly provide for basic needs of physical health, food, clothing and shelter and/or substantially unable to manage financial affairs or resist fraud or undue influence.

Incapable of making medical decisions or accepting treatment and care.

Laws Governed By:

Welfare & Institutions Code and Probate Code

Probate Code

Funding:

Primarily state mental health funds. Fees are charged to conservatees with sufficient assets.

Fees are approved by the court and paid from the conservatee's finances.

Characteristics of Conservatee:

Severely mentally ill (psychiatric diagnosis) or, on extremely rare occasion, chronic alcoholic.

Mentally or physically unable to provide for own needs. Often victims of financial or physical abuse or neglect. Often suffering from dementia, now referred to as major neurocognitive disorder.

Age of Conservatee:

Adults or minors. Most cases are adults.

Adults only. Minors are placed under guardianship.

Referral Sources:

Psychiatric treatment and evaluation facilities designated by the Board of Supervisors (Community Behavioral Health Center (CBHC), Psychiatric Health Facility (PHF), and the VA Hospital) and the Fresno County Superior Court for criminal defendants.

Anyone. Common referral sources include Adult Protective Services (APS), Superior Court, hospitals, nursing homes, banks, relatives, and neighbors.

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Who may file a petition for conservatorship?

In Fresno County the Public Guardian is the board-designated LPS conservatorship investigator and is the only entity who can file a petition for LPS Conservatorship.

Anyone. Most often a family member or loved one files a petition. The Public Guardian will file when family members or others are not willing or able to serve as conservator.

Who may serve as the conservator?

The Director of the Department of Behavioral Health (DBH) as temporary conservator. As general conservator, usually the Director of DBH or occasionally a family member.

Anyone may serve. Often a family member. The Public Guardian will serve if no other persons are willing or capable of serving.

Who manages the conservatee's finances while under conservatorship?

The Public Guardian as payee or as probate conservator of the estate. In rare instances a family member or fiduciary may manage the finances.

The appointed conservator of the estate. If the Public Guardian is conservator of the person they are usually also conservator of the estate.

Placement:

Conservatee may be placed by conservator into a locked facility for psychiatric treatment. Must be placed in least restrictive facility necessary.

Anywhere in the best interest of the conservatee. Conservator may not place conservatee into a secured treatment facility unless given specific authority by the court for treatment of dementia.

Medication Authorization:

Conservator may give consent for psychiatric treatment including psychiatric medications. Authorization for medical treatment unrelated to the mental illness may be granted by the court.

Conservator usually given authority for medical decisions. Conservator may not give consent for psychiatric medications unless given specific authority by the court for the treatment of dementia.

Attorneys:

County Counsel represents Public Guardian and Director of DBH. Public Defender is usually appointed to represent conservatee. Private attorney may represent private conservator.

County Counsel or private attorney for the Public Guardian. Proposed conservatee (or other interested persons) must request representation, unless authorization to treat dementia is requested, in which case an attorney is appointed by the court.

Legal Burden of Proof:

Beyond a reasonable doubt.

Clear and convincing evidence.

When does the conservatorship terminate?

Term: One year

Term: Indefinite

Automatically terminates at the end of one year yet can be renewed indefinitely by the court if person remains gravely disabled. Conservatee may request a re-hearing to contest the conservatorship at any time.

Terminates upon death or restoration to capacity.

For further information visit the Public Guardian's Office website at www.fresnocountyca.gov/PGO.

It should be noted that each county operates slightly differently and local policies will declare who conducts LPS Conservatorship investigations and serves as the LPS Conservator. Local policies will also vary with respect to the management of LPS conservatee's finances.