

Conservatorships: What They Are, How They Work, And How To Avoid Them



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What do pop star Britney Spears, Brian Wilson of the Beach Boys, former professional football player Michael Oher, and the wife of Jay Leno have in common? They've all been subject to conservatorship, a situation where the court determines an individual is unable to manage their person, their finances, or both. The court then appoints someone to make decisions on that person's behalf and in that person's best interest.

In Brian Wilson's and Mavis Leno's cases, where gradual mental decline was the impetus for conservatorship, a better outcome may have been possible with proper estate planning. Spears' and Oher's conservatorships, both eventually terminated after many years, have been tangled up in accusations of fraud and abuse perpetrated by parents seeking to take advantage of their child's talent and wealth.

Conservatorships can be a useful and potentially life-saving tool, but can be avoided with careful and appropriate estate planning.

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The Conservatorship Process

Conservatorship laws can vary by state. For one, some states — including Pennsylvania — call it a guardianship. Regardless, here's how the process generally works.

Someone who has identified an adult's alleged inability to understand, reason, keep themselves safe, or manage their finances files a court petition seeking to become that person's conservator. The petition explains why a conservatorship appears necessary. A doctor evaluates the proposed conservatee's capacity and attests to their findings in writing. A court employee or social worker may interview the proposed conservatee to validate the petitioner and doctor's findings.

The court sets a hearing date and notifies the proposed conservatee's relatives. At the hearing, the judge examines the evidence and hears arguments from interested parties. The judge then grants the conservatorship or dismisses the case.

If granted, the judge will appoint a conservator or co-conservators, who may accept or decline the responsibility.

Roles and Responsibilities of a Conservator

Upon accepting the appointment, the conservator becomes legally responsible for certain aspects of the conservatee's well-being as decreed by the court.

- For a conservatorship of the person, they may be in charge of where the conservatee lives, what they eat, what medications they take, which doctors they see, and whom they communicate with.
- For a conservatorship of the estate, the conservator may pay the conservatee's bills, receive their income, buy and sell assets, and file their tax returns.

Here are some examples of when each type might be used:

- A conservatorship of the person may be needed when an individual has become paralyzed but can still think clearly and manage their own finances, or when a totally incapacitated person's financial affairs can be managed by a trust.
- A financial conservatorship, or conservatorship of the estate, may be needed when an individual has experienced a traumatic brain injury and can't handle the cognitive load of managing their finances. However, they are alert and aware and can still handle the activities of daily living and make competent choices about their medical care.



- A conservator may also need to manage both the person and their finances. In any case, the conservator has tremendous responsibility and control.

Conservatorship is not necessarily intended to be permanent. The court can terminate it if the conservatee's mental or physical incapacity ends. However for the duration of the conservatorship, the conservator must file regular reports with the court to account for the responsibilities being managed and to opine on whether the conservatorship is still necessary.

Drawbacks of Conservatorships

Courts are involved in conservatorships to prevent the mishandling of finances and medical decisions for someone in a vulnerable position. The intent is good, but there are several drawbacks that come along with a conservatorship.

Suppose your spouse, sibling, or closest friend unexpectedly went into a coma tomorrow. It's not as far-fetched as it sounds. Diabetic shock, stroke, tumor, drug overdose, and carbon monoxide poisoning are just some of the circumstances that can flip the switch on a person's mental and physical capacity.

Gaining control of your loved one's finances and care through the court system can take weeks or months — even for the rich and famous. An emergency conservatorship to appoint a temporary conservator can potentially be implemented in days but is still best avoided.

Court records pertaining to conservatorships are open to public inspection, potentially exposing all of the conservatee's assets and liabilities, as well as their medical situation to anyone willing to look this information up. Those people — other family members, nosy neighbors, the media, and straight-up scammers — usually have their own best interests in mind.

Thus, while the conservatorship process is meant to protect people from exploitation, it can also expose them to threats they otherwise might be protected from. Rules on what information can be redacted or sealed in court records vary by jurisdiction.

Further, court proceedings cost money in filing fees, attorney fees, and conservator fees. They take up time you'd rather spend doing almost anything else. And there's no guarantee the court will appoint you — or the person you would prefer — as conservator. Your loved one's care could be taken out of your hands. Family disputes could erupt over who the conservator should be.

Wealthy families may have a particularly strong interest in avoiding conservatorships. In addition to privacy concerns, managing business interests and complex financial structures requires specialized knowledge.

Avoiding Conservatorships

Witnessing a loved one's mental or physical incapacity is never easy. But it can be less of an emergency when that person has the right documents and systems in place.

A living will provides guidance for loved ones to make medical decisions on your behalf. A medical power of attorney designates someone to act on your behalf. An advance directive accomplishes both objectives.

A financial power of attorney assigns someone you trust to handle your assets and obligations if you can't. And funded trusts can make it easier for your financial power of attorney to jump in without the hassles of waiting for various financial institutions to validate your power of attorney.

Choosing people you trust and can rely on for these roles is extremely important. Every role should have at least one backup person, and you should update your designations promptly if anyone you've appointed dies or has a change of circumstances. Wilson's conservatorship became necessary because his wife Melinda, who had been his caretaker, passed away without naming a successor.

The Importance of Estate Planning

With proactive planning, most people can avoid ever being subject to a conservatorship. Ideally, every adult will have these key documents (a will, an advance directive, and financial power of attorney) in place and will work with a financial advisor and estate planning attorney to ensure their completeness and validity. As long as your documents are legally valid, your agents should be able to step in to their assigned duties, if needed, without court intervention.



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