

LIMITED CONSERVATORSHIPS AND ALTERNATIVES 2023

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Disclaimer

The following presentation is meant for education only and does not constitute legal advice or counsel. Your situation may be unique and require careful attention.

Keep in mind that the information in these slides could become out of date, as the laws and local practices relating to these matters are constantly developing

Before age 18



They decide everything about the consumer (health, food, clothing, housing, finances, education, or other personal needs):

- ▶ Parents
- ▶ Guardianship. In California, this is for children under 18 years of age.
- ▶ Authorization according to Family Code section 6550 (Caregiver's / Caregiver's Authorization Affidavit)

<https://www.courts.ca.gov/documents/caregiver.pdf>

When the young person turns 18

The young person has the right to decide on his life.

1. Issues of the person

- ▶ Health
- ▶ Food
- ▶ Clothing
- ▶ Living Place
- ▶ Education
- ▶ Other personal needs



What do I do?



- ▶ General conservatorship?
 - ▶ Judicial Process
 - ▶ It takes away the rights of the consumer
 - ▶ For people 18 years or older
 - ▶ It lasts until the court ends it; the consumer dies...

Limited conservatorship

The judge may take away some or all of the following rights:

- ▶ The right to determine your place of residence
- ▶ The right to view confidential records
- ▶ The right to marry
- ▶ The right to sign contracts
- ▶ The right to consent to medical treatment
- ▶ The right to control your social and sexual contacts
- ▶ The right to make decisions related to education



Limited conservatorship (cont.)



- ▶ The conservator cannot:
 - ▶ Control the salary or salary that the consumer earns in his work.
 - ▶ Approve harmful medical treatments.
 - ▶ Force the consumer to carry out drug treatments
 - ▶ Forcing the consumer to sterilize so as not to have children.
 - ▶ Place the consumer in an institution.
 - ▶ Accept that they give the consumer an electro convulsive treatment (electroshock).
 - ▶ Accept that they provide psychotherapy to the consumer.
 - ▶ Have other power that have NOT been specifically authorized by the court.

Limited conservatorship (cont.) Who gives information to the judge?

- ▶ Investigator - works with the consumer to:
 - ▶ Explain the request and analyze it
 - ▶ Interview you and inform you of what the conservatorship process consists of
 - ▶ Determine if you:
 - ▶ You are in a position to attend the hearing.
 - ▶ Opposes conservatorship
 - ▶ Opposes the proposed conservatorship or prefers someone else



Limited conservatorship (cont.) Who gives information to the judge?

- ▶ Regional Center - Will evaluate you and file a report with the court. The report must include:
 - ▶ The nature and degree of your disability.
 - ▶ The type of assistance you need.
 - ▶ Your physical condition.
 - ▶ Your mental condition and social well-being.
 - ▶ Recommendations on the rights requested in the petition.

Limited conservatorship(cont.) and Office of Clients' Rights (OCRA)

- ▶ Inform you of your rights
- ▶ Inform you about alternatives to conservatorship
- ▶ Talk to the attorney or probate court investigator or help you talk to them and others who might be able to help you.
- ▶ Office of Clients' Rights Advocacy
Toll Free: (800) 390-7032



What is the goal?

Keep the person as independent as possible.



Assembly Bill 1663

As of January 1, 2023:

- ▶ Establishes supported decision-making in statute as an alternative to conservatorship.
- ▶ Alternatives to conservatorship must be considered.
- ▶ Requires courts to provide conservatees with information regarding the rights that they retain.
- ▶ Court can terminate a conservatorship without a hearing if conservatee and conservator agree.

<https://legiscan.com/CA/text/AB1663/2021>

Alternatives

- ▶ (a) Supported decision-making
- ▶ (b) Durable power of attorney
- ▶ (c) Advance health care directive
- ▶ (d) Right to make medical decisions
- ▶ (e) Right to make educational decisions
- ▶ (f) Right to administer finances

Supported decision-making (SDM)

- ▶ People with disabilities (PWD) retain capacity to make decisions by choosing people to help them make, understand, and communicate their decisions.
- ▶ The person with a disability makes the final decisions about their own life.
- ▶ Can change people in SDM group at any time.
- ▶ SDM helps PWD:
 - ▶ Achieve goals in life.
 - ▶ Make decisions about where, in what way and with whom they will live.
 - ▶ Make decisions about where they want to work.
 - ▶ Understand things that come up in their lives...



Supported decision-making (SDM)

- ▶ No agreement necessary but may be best practice.
- ▶ If there is an agreement, see samples:
 - ▶ https://www.aclu.org/sites/default/files/field_document/aclu_supported_decision-making_agreement.pdf
 - ▶ https://disabilityvoicesunited.org/wp-content/uploads/2020/11/SDM-Handbook_Oct2020.6.pdf

(Appendix A).



Power of Attorney



- ▶ A legal document where the consumer gives a person they trust the legal right to make decisions for them.
- ▶ The consumer can give someone power of attorney to make decisions regarding the following: finances, property, or education. The power of attorney can be general or limited. It can also be durable or springing.

Power of Attorney for Healthcare

- ▶ A Power of Attorney for Healthcare is also known as a Medical Power of Attorney.
- ▶ Includes decisions related to “personal care of the principal, including, but not limited to, determining where the principal will live, providing meals, hiring household employees, providing transportation, handling mail, and arranging recreation and entertainment.” See Probate Code Section 4671.
- ▶ It is usually part of the Advanced Health Care Directive. See Probate Code Section 4701.

Advance Health Care Directive



- ▶ A form that gives another person the right to make medical decisions when you are no longer able, according to your wishes.

- ▶ Examples:
 - ▶ ENGLISH:
<https://oag.ca.gov/sites/all/files/agweb/pdfs/consumers/ProbateCodeAdvancedHealthCareDirectiveForm-fillable.pdf>
 - ▶ ENGLISH/SPANISH (Riverside Community Hospital):
<https://riversidecommunityhospital.com/util/forms/Advanced-Directive-English-Spanish-fillable.pdf>

Right to make medical decisions

- ▶ Medical power of attorney/Advance health care directive
- ▶ Obtaining Medical Information of Another:
 - ▶ Sign a HIPAA Medical Information Release Form
 - ▶ You and one other person can call the organization together and give your permission over the phone.



Right to make educational decisions?

- ▶ You can sign a letter giving the right to a person to decide educational matters.

1. A letter under Cal Ed. Code 56041.5:

<https://serr.disabilityrightsca.org/serr-manual/appendix/p-assignment-of-educational-decision-making-authority-california-education-code-section-56041-5/>

2. Power of Attorney

3. Limited conservatorship

Obtaining general information of another:

- ▶ Sign a consent form to release the information or records.
- ▶ You and one other person can call the organization together and give your permission over the phone.

To manage finances

- ▶ Power of attorney
- ▶ You can choose someone to be your representative payee for SSI and Social Security services
- ▶ You can request that the services be listed in writing in the IPP to help you manage your money, as your independent living services worker.
- ▶ A special needs trust may be established to manage your funds. In that case, the trustee would take care of managing your money.
- ▶ Joint bank accounts - You can open a joint account with someone you trust to help you write checks, make deposits, or withdraw money.
- ▶ ABLE account



Regional Center

- ▶ WIC Sec. 4655: Your regional center may authorize some medical, surgical, or dental treatments in certain situations.
 - ▶ If the consumer does not have an authorized person to give medical, dental, or surgical consent - or the person with authority does not respond with a reasonable time, then the Director can give consent or not.
 - ▶ The Director of the Regional Center may decide
 - ▶ The Director can initiate the process for conservatorship

See:

https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=4655&lawCode=WIC

NOTE: A Supported Decision-Making Agreement would likely allow the process of medical consent to proceed more smoothly than providing consent under WIC Sec. 4655.

Additional Resources:

- ▶ Limited Conservatorships and Alternatives (Disability Rights California Publication #5578.01):
<https://www.disabilityrightsca.org/publications/limited-conservatorships-alternatives>
- ▶ Support Without Courts (Information About AB 1663 and Supported Decision-Making): <https://supportwithoutcourts.org/>
- ▶ Supported Decision-Making Handbook (Disability Voices United):
https://disabilityvoicesunited.org/wp-content/uploads/2020/11/SDM-Handbook_Oct2020.6.pdf
- ▶ Self-Help Resource for Alternatives to Conservatorship (CA Courts):
<https://selfhelp.courts.ca.gov/helping-person-impairment-or-disability>
- ▶ Determining Competency to Sign a Durable Power of Attorney:
<https://saclaw.org/articles/determining-competency-sign-durable-power-of-attorney/>
- ▶ Resource for Advanced Health Care Directives (California):
<https://prepareforyourcare.org/es/advance-directive-state/ca>

Questions?

