

## Alternatives to Conservatorship

Before asking the court to make you a conservator, you are required, by law, to consider alternatives. This is because conservators have a great deal of power over the lives of conservatees, and courts are concerned with protecting people's rights and freedom even if they cannot manage on their own. Alternatives may postpone or eliminate the need for conservatorship.

Most of the alternatives listed below require that the person needing help agree to them. In agreeing, they have to understand the nature and consequences of their decisions and be able to communicate them. If they are able to understand and communicate at certain times but not others, they can agree during those times when they are able. If the person's ability to understand and communicate is unclear, it is best to talk to a lawyer.

### Alternatives to Conservatorship for Health and Personal Care Decisions

- 1. Case management.** Many public and private social service agencies in San Francisco arrange for and coordinate health and social services for people who have multiple needs as a result of illness or disability (See Resources). Case managers are social workers or nurses who carefully assess what people can and cannot do for themselves and meet with them regularly to see if their needs have changed and if the services that are being provided are helping. People needing help have to agree to case management and understand what they are agreeing to. They also have to cooperate with the people providing services, which could include meal delivery, housekeeping services, transportation to medical appointments or physical therapy, and personal care attendants in the home.
- 2. Advance Directives for Health Care (includes Durable Power of Attorney for Health Care).** In California, people can ensure that their health and medical care wishes are respected if they become unable to communicate them. They can complete a form called the Advance Directives for Health Care. This form allows people to state what their wishes are and to name others to make decisions for them. The person signing the form must understand the nature and consequences of his or her health care choices and be able to communicate them. A form is only the starting point. Before signing, the person should be encouraged to learn more about advance directives and talk about their wishes with their doctors and persons they are naming to make decisions for them. There are also many useful books and pamphlets that can help (see Resources). Although it is not necessary to have a lawyer assist with health care advance directives, it is helpful especially if there is conflict in the family or uncertainty.
- 3. Medical Decisions for people in nursing homes.** In California, teams of health care providers, including patients' doctors, can make medical decisions on behalf of nursing home patients who do not have someone to make decisions for them (Health and Safety Code Section §1418.8).
- 4. Requesting court authority for medical treatment.** Under some circumstances, judges or court commissioners make medical decisions or allow others to make decisions for people who are unable to do so themselves. Typically, hospitals apply for specific medical treatments or changes in living arrangements. It is appropriate when just one or a few decisions are needed. (Probate Code Section §§3200-3211).
- 5. Health Care Consent Law**

### Alternatives for making financial decisions

Many alternatives for handling finances and property are voluntary but the person whose financial affairs are to be handled, must understand the process and agree to it. Some alternatives can be used without an attorney being involved.

**Daily money management** programs help people with simple, routine tasks like paying bills, making bank deposits, and filing taxes. The person needing money management has to be willing and able to agree to it. The service is recommended for people whose financial affairs are not complicated. These programs are available through health and social services agencies.

**Joint bank accounts** are a simple way for people to give others access to their bank accounts to write checks, make deposits and withdrawals, and keep what is left in the account if one of the owners dies. There are risks involved because one joint owner has little control over what the other does. The two people own the account equally regardless of whose money it was to start with. It is only recommended if the owners have complete trust in one another.

**Representative Payeeship.** Many federal agencies issue benefit checks and can authorize a person or institution to receive the check on behalf of an adult with diminished capacity due to dementia, drug or alcohol abuse, mental illness or a developmental disability. The federal agencies include the Social Security Administration, the Department of the Veterans Affairs, the Department of Defense, Railroad Retirement Board, and the Office of Personnel Management. Payees, who may be family members, friends, volunteers, or institutions such as social service agencies or nursing homes, receive monthly checks and use them to pay the expenses of the people they are appointed to help. The representative payee does not have control over any of the recipient's other funds. It is a good idea for people who have no other income besides public benefits. A physician's statement is required as part of the application process.

**General or Limited Power of Attorney.** This power of attorney is for limited time or for a single action. For instance, a person who has severe arthritis in his hands might sign a power of attorney specific a bank account so his sister can write out the monthly bills. Most financial institutions have their own forms. This power of attorney is no longer valid if the person executing it loses decisional capacity.

**Durable Powers of Attorney (DPOA) for Finances.** A DPOA lets someone appoint a person they trust to help manage their finances if they lose decisional capacity. The person who needs help is called "the principal," and the helper is called the "attorney-in-fact." Attorneys-in-fact can pay bills, hire in-home help, and file taxes for principals. Although principals must understand what DPOAs are, what they do, and what they allow attorneys-in-fact to do when they sign them, "durable," means that attorneys-in-fact still have

power after principals lose the ability to make decisions for themselves. DPOAs are fairly simple and inexpensive to create but there are risks involved. Attorneys-in-fact are not monitored or bonded. Nevertheless DPOAs are a good idea for people who have others they completely trust to give the power to. Although DPOA forms are available at stationery stores or on-line, it is best to consult lawyers to help ensure that the DPOAs is as “theft-proof” as possible and that it will accomplish what the person wants.

**Living Trusts.** This arrangement allows someone, called a *grantor*, *settlor*, or *trustor*, to place savings, stocks, bonds, real estate, life insurance, and other property under the control of a *trustee*. The trustee controls and manages the assets for the benefit of *beneficiaries* of the trust. Most people who set up living trusts initially name themselves as trustees so that they can manage the trusts as long as they are able to but name others as *successor trustees* to take over when they die or become incapacitated. Living trusts are especially useful for people who have substantial assets. It is best to consult with a lawyer to decide if a trust is suitable and to determine the most appropriate type of trust. Attorney fees are involved. Trusts do not necessarily help people avoid taxes.

### Finding a lawyer

If you need help from a lawyer, find one who has handled alternatives to conservatorship before. Lawyers have different specialties, and those familiar with powers of attorney, advance directives, and social services include probate lawyers, estate lawyers, and elder law lawyers. For help finding a lawyer:

- Call the Bar Association of San Francisco’s Lawyer Referral Service at 415.989.1616. The Bar Association’s Volunteer Legal Services Program provides legal help for low-income people.
- The National Academy of Elder Law Attorneys (NAELA) provides advice on how to find and choose attorneys with experience in legal matters affecting older people. See their web site at <http://www.naela.org>.

### Resources

- AARP’s website has helpful information about living trusts, wills, and other planning documents: [www.aarp.org](http://www.aarp.org).
- The **California Medical Association** provides information about Advance Health Care Directives at their web site: <http://www.cmanet.org>
- The **California Coalition for Compassionate Care** web site also provides information about Advance Health Care Directives at: <http://finalchoices.calhealth.org>
- **American Bar Association’s** "Consumer’s Tool Kit for Health Care Advance Planning is available on line at: <http://www.abanet.org/aging>
- The *Handbook for Conservators* prepared by the **California Judicial Council** is available for \$20 at the Civic Center Courthouse, 400 McAllister Street, San Francisco, in Room 103. The Resource Supplement is included and contains numerous resources in San Francisco for adults who have diminished physical or mental capacity or both.

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