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Conservatorships demystified; exploring the State's conservatorship types and their impact

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On Feb. 1, 2008, one of the most famous singers of the late 1990s and 2000s, Britney Spears, became the subject of a conservatorship in the Los Angeles County Superior Court. Spears' conservatorship became headline news around the world, and this confusing area of California's Probate and Mental Health laws became a topic of gossip and speculation.

Probate attorneys suddenly became popular targets for a variety of questions, i.e., "This is all about the money, right?" and "But she's not old, why is she conserved?" These questions are not easily answered without a basic understanding of California's conservatorship laws, however. This article sheds light on conservatorships, the types of conservatorships that exist in California, and how they impact the lives of both conservators and conservatees.

WHAT IS A CONSERVATORSHIP?

Simply stated, a conservatorship is a court proceeding where the court appoints a third party--known as a "conservator"--to protect persons who cannot safely make decisions related to their care or property and lack the ability to provide for their necessities of daily living, i.e., food, medical care, shelter, hygiene, etc. - known as a "conservatee"

TYPES OF CONSERVATORSHIPS

A. Probate Conservatorships

As indicated by their name, probate conservatorships are gov-



Supporters of Britney Spears take part in a rally outside the Stanley Mosk Courthouse during a hearing on Britney Spears' conservatorship, Wed., July 14, 2021, in Los Angeles.

erned by California's Probate Code and come in two types: a conservator of the person or the estate. The appointed conservator of the person oversees the personal care of the conservatee, while the conservator of the estate focuses on the management of a conservatee's finances.

Before California's probate courts will consider whether to appoint a conservator of the person or the estate, they will look to see if there are "less restrictive alternatives" available. "Less restrictive alternatives" typically include other estate planning arrangements that empower third parties to make personal or financial decisions on behalf of the conservatee, such as dur-

able powers of attorney, advanced healthcare directives, and trusts.

When a conservatorship is necessary, it is not always required that a conservator of both the person and the estate be appointed. For example, a person with advanced dementia unable to make decisions related to their healthcare or provide for their necessities of daily living and lacking a "least restrictive alternative," such as a durable power of attorney for healthcare decisions, will require a conservator of the person. However, if their assets are funded to a trust, then the acting trustee will make all financial decisions regarding how best to use the trust assets to provide for the



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conservatee, and a conservator of the estate is not necessary.

Another important consideration is how quickly relief is needed. It is common that a conservator's appointment hearing will be scheduled several weeks after a conservatorship petition is filed. Often the appointment is urgent, however. In such cases, it is necessary to petition to appoint a temporary conservator of the person, estate, or both via an ex parte application until a permanent appointment is made.

B. Limited Conservatorships

The Legislature created limited conservatorships of the person, estate, or both for adults with developmental disabilities, e.g., individuals with severe autism or birth defects. A limited conservator is appointed to help make certain decisions for the conservatee while encouraging the conservatee to exercise self-reliance and independence. Limited conservatorships are "ordered only to the

extent necessitated by the individual's proven mental and adaptive limitations." Prob. C. 1801(d).

The powers available to a limited conservator include fixing the residence of the limited conservatee, access to the conservatee's confidential records and papers, consenting or withholding consent for a limited conservatee to marry, granting or limiting the right of a limited conservatee to contract, granting or withholding the right of a limited conservatee to give medical consent, granting or withholding the right of a limited conservatee to control their social and sexual contacts and relationships, and lastly, making decisions regarding the limited conservatee's education. Prob. C. § 2351.5.

It is important for parents of developmentally disabled children receiving government services to petition for a limited conservatorship one year prior to their child's 18th birthday to avoid any

interruptions in those services. As a child approaches 18, the regional center working with the parents will recommend the establishment of a limited conservatorship.

C. LPS Conservatorships

Unlike probate conservatorships, LPS conservatorships are under the jurisdiction of California's mental health courts and governed by the Lanterman Petris-Short Act, California Welfare and Institutions Code section 5000-5556. These are conservatorships for the "gravely disabled." A person is considered "gravely disabled" when that person, due to a mental health disorder or severe substance abuse issues, or both, is unable to provide for their personal needs for food, clothing, shelter, etc.

There are several key differences between a probate conservatorship and an LPS conservatorship. First, an LPS conservatorship must be rec-

ommended by the administrator of an LPS evaluation or treatment facility designated by a county or county jail. Second, not just anyone can petition to establish an LPS conservatorship. Rather, only the public guardian may do so. Third, the proposed conservatee in a probate conservatorship must be 18 years of age or older, while an LPS conservatee can be any age. Fourth, a probate conservatorship remains in place until the conservatee dies or the conservatorship is terminated by the court. An LPS conservatorship, however, lasts only one year but is subject to reevaluation and renewal at the end of that year.

CONCLUSION

Conservatorships are not a "one size fits all" proceeding. Depending on the type of conservatee, their age, whether they are developmentally disabled or "gravely disabled," the type and length of the appropriate conservatorship can vary greatly.