

Pros and Cons of Conservatorships

In a world of do-it-yourself law, you might be tempted to handle the legal process on your own if you decide to pursue a conservatorship. However, it would be advisable to consult an attorney specializing in this legal terrain beforehand, such as an elder law attorney or a conservatorship attorney. He or she can advise you on whether or not a conservatorship might solve a particular problem, describe the obstacles you could face, and provide the pros and cons of seeking a conservatorship. Let's look at them here.

Conservatorship Pros

- Subject to court supervision as a safeguard
- Often requires the conservator to gain permission prior to making major decisions
- Often requires the conservator to post a bond
- Requires court filings and accountings on a regular basis
- Requires the maintenance of detailed records
- Monitored by the court

Conservatorship Cons

- Leaves a paper trail and is time-intensive and costly to set up
- Often removes decision-making control from family and gives it to third-party surrogates
- Can create an even bigger problem
- Requires the ongoing assistance of an attorney
- Requires court hearings where a physician's evaluation can overly influence the adjudication process
- Almost automatically granted at the adjudication stage, i.e., "rubber stamping"
- Hearings are typically nonadversarial and brief, often lasting only 2 to 5 minutes
- Requires court filings on a regular basis (for conservator)
- Requires keeping detailed records (for conservator)

- Proceedings and documents are a matter of public record
- Courts don't have the resources to monitor conservators properly; abuses often go unnoticed
- Can be very costly, especially if a professional conservator is used
- Can chew up estates and deny beneficiaries their inheritance
- Court decisions tend to be "absolute"; no or limited consideration is given to alternatives
- Rarely takes into account "the principle of the least restrictive alternative," e.g., consideration given to partial or limited conservatorships
- Court-appointed attorneys represent the court's and client's interests and thus create an inherent conflict of interest
- Usually permanent

Clearly, the disadvantages of a conservatorship outweigh the advantages, which is not to say that conservatorships are entirely a bad thing. But as a solution to family disputes over how an incapacitated elder's life should be managed, *conservatorships should be a last resort*. Not only is a conservatee legally required to relinquish decision-making power over his or her life to someone else, possibly a faceless third party, but the conservatee is also rendered powerless to do something about it. Like a train wreck waiting to happen, loved ones are helpless in preventing a conserved family member from having his or her estate bled dry and in stopping him or her from being subjected to unwanted medical treatments. If someone dares to file an objection, he or she will quickly find out that the deck is stacked against him or her.

As mentioned, a conservatorship tends to be permanent. Still, it may be terminated for these reasons:

- You die.
- You run out of money.
- You no longer need assistance.
- The conservator resigns.
- The conservator dies.
- The court removes the conservator.

In the last three situations, the conservatorship doesn't usually end. Instead, the court will appoint a new conservator to take over the conservator's duties.

In a later chapter, we'll discuss alternatives to a conservatorship, such as durable power of attorney, living trusts (also known as "inter vivos" trusts) court authorizations for medical care, and other options. But even if you've created these legal instruments, you still can be conserved. The conservatee in the Lyon case had long established a living trust, durable powers of attorney for health care and for finances, and even named conservators in the event a conservatorship was required. None of these contingencies prevented the conservatorship from happening.

The key take-away is that *a conservatorship is the most restrictive form of court intervention that may deny you all, or some, of your freedoms indefinitely*. It can reduce you to the status of an infant with as few rights as a felon.