Reverse Your Thinking ®

EDUCATIONAL RESOURCE SERIES
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Conservatorships

Understanding the legal relationship, when it may be needed and key real estate considerations.



What is a Conservatorship?

Conservatorship is a court-approved and court-supervised legal relationship between a competent adult (known as a conservator or guardian) and an adult who needs assistance with decision-making. The person who needs assistance is referred to as a ward in legal documents.

Who Needs a Conservatorship?

An individual with intellectual or developmental disabilities may need a conservator if:

1. They do not understand how to manage finances.
2. They need medical care or other services that will not be provided unless there is a clear understanding of their legal capacity to consent.
3. They are making decisions that greatly endanger themselves or others.
4. They have not executed a durable power of attorney that allows others to act on their behalf.

Types of Conservatorship?

Conservatorship of the Person

A conservator may be appointed to make decisions concerning personal matters, including where the individual lives, medical treatment, work, travel and other personal issues.

Conservatorship of the Estate

The conservator generally has authority over the individual's finances, income, assets and property rather than personal matters. The conservatorship is based on the individual's inability to manage assets or property.

How is the Conservator Appointed?

Conservatorship laws and procedures vary by state. There is no uniform national conservatorship law. The process will generally include filing a petition with the appropriate court, review of the petition by the court, notice to applicable parties, a court hearing, and entry of the court's conservatorship order.

Asset inventory and management

The conservator is required to provide an inventory of the ward's assets and report those assets to the court. When assets must be maintained, the conservator may obtain court authority to manage and control them.

Mortgaging the ward's real estate

A conservator may petition the court for permission to mortgage real estate owned by the ward and must explain the reasons for the proposed mortgage. After appropriate notice and hearings, the court may issue an order authorising the mortgage of the property described in the petition. If authorised, the order must give the conservator authority to execute the necessary mortgage documents on behalf of the ward.

Title company requirements

When a conservator is appointed, a copy of the court order must be provided to the title company. The title company relies on the terms of the court order to approve the real estate transaction. The title company will generally require a certified copy of the order and record it as an exhibit to the mortgage documentation.

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