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CONSERVATORSHIP

THE AGE OF MAJORITY

Under the law, parents or court appointed legal guardians make decisions for children up to a certain age that is set by state law. This age is referred to as the age of majority. At this point, the individual becomes the legally responsible decision maker. The age of majority in most states, including California, is 18. This age-related transfer of legal authority occurs automatically in all cases, except where a court has formally determined otherwise.

COMPETENCY

Once a child with a disability reaches the age of majority, he or she is considered to be legally competent to make his or her own decisions unless a question regarding his or her competency to make such decisions is raised. The only way that any adult's right to make legal decisions may be abridged or transferred is through formal court action. The courts will not presume that a person is not competent to make decisions simply because they have a developmental disability. Many adults with developmental disabilities have been found competent to make some or all of their own legal decisions, despite the protestations of family members.

PERSONAL REPRESENTATIVES & POWERS OF ATTORNEY

Since individuals with developmental disabilities who have reached the age of majority are presumed competent, they have the legal authority to appoint others to assist them with their affairs. All publicly funded programs and services will have a method by which a beneficiary of services may appoint another individual to assist them and/or to speak on their behalf. Any competent person also has the authority to delegate specific legal authority to another individual under a prescribed set of circumstances through a Power of Attorney.

CONSERVATORSHIP

The appointment of a legal guardian for an adult is referred to by different terms in different states. In California, adult guardianships are referred to as conservatorships. A conservatorship is obtained by petition to the superior court. When a conservatorship petition is initiated, the court will first determine whether the proposed conservatee is competent to make decisions through a careful investigation. If the determination is reached that the person lacks the capacity to make certain decisions, the court will then appoint a substitute decision maker for that individual who becomes his or her conservator. In most cases involving individuals with developmental disabilities, the petition for conservatorship is initiated by a family member who will ultimately serve as conservator. Because conservatorship petitions lead to an abridgement of a person's legal rights, the proposed conservatee may be provided with independent legal counsel in the process.

The establishment of a conservatorship assigns the responsibility for the Conservatee to the Conservator and certain specified powers are transferred to the conservator. When legal authority to make all financial and/or all personal decisions is assigned, these are referred to as General Conservatorships. In cases where only the power to make all financial decisions is assigned, legal authority in these areas is exercised by a Conservator of the Estate. Generally, the management of an individual's allowance, earnings, and public benefits such as Supplemental

Security Income is not transferred to a conservator of the estate. Since these comprise the entire estate of most adults with developmental disabilities, a conservator of the estate is often unnecessary. In cases where the power to make all personal decisions is assigned, legal authority in these areas is exercised by a Conservator of the Person. When the appointment of a conservator becomes final, the court will issue Letters of Conservatorship to certify this appointment.

LIMITED CONSERVATORSHIP

In 1980, the California Legislature established a specific type of conservatorship for adults with developmental disabilities, referred to as Limited Conservatorship. This law has two primary intentions: 1) to provide a protective proceeding for individuals whose disability impairs their ability to care for themselves or their property, but is not sufficiently severe to require limitations in all areas; and 2) to encourage the maximum self-reliance and independence of the individual by only transferring authority for those decisions that he or she is unable to exercise capably. The limited conservator has the duty to secure habilitation, training, education, medical and psychological services, and social and vocational opportunities to help the conservatee develop self reliance and independence. The specific powers that may be transferred to the limited conservator of the person include the power to: fix the person's residence; access the confidential records of the individual; to consent to marriage; to engage in a binding contract; consent to medical treatment; control social and sexual contacts and relations; and make decisions concerning education and training. The limited conservator is responsible for remaining informed regarding the conservatee's status, needs and welfare and is obligated to report specific events to the court. The court will also periodically review the performance of the conservator.

The conservatorships discussed above are established under the Probate Code and are often referred to collectively as Probate Conservatorships. No type of probate conservatorship includes the authority to consent to involuntary psychiatric medication or treatment, commitment to a locked facility (such as a State Developmental Center, or sterilization.

IS A CONSERVATORSHIP NECESSARY?

There are simpler alternatives by which the authority to provide certain types of assistance can be shared or transferred. As long as the person agrees, the participation of family members in decision making is generally accepted in the arena of adult services for persons with developmental disabilities. The Social Security Administration makes provisions for the appointment of another person to handle Social Security, Supplemental Security Income, and associated benefits, referred to as a Representative Payee. In instances where access to confidential records or the ability to assist with educational and vocational service planning is all that is needed, a signed authorization may be all that is necessary. (Sample authorization forms are available from the Office of Advocacy at Alpha Resource Center of Santa Barbara.) In other instances, the necessary authority might be more easily transferred through a Limited Power of Attorney. Conservatorship becomes a more important consideration under certain circumstances: When the individual consistently insists upon making unwise decisions and poor personal choices; when there is concern that physicians and hospitals might not accept the person's ability to make an informed decision regarding medical treatment; or when considering whether a legally appointed decision maker might be needed in the event that family members are no longer to be actively involved in the person's life.

This guide is provided by CAPS of Santa Barbara, Inc. for the general information of persons with developmental disabilities and their families. Consultation with an attorney with expertise in these matters is essential before making taking any legal action.