

Alternatives to Conservatorships

Presented by
Office of Clients' Rights Advocacy
at Disability Rights California

Presenter Introductions

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<https://www.disabilityrightsca.org/what-we-do/programs/office-of-clients-rights-advocacy-ocra>

Disability Rights California

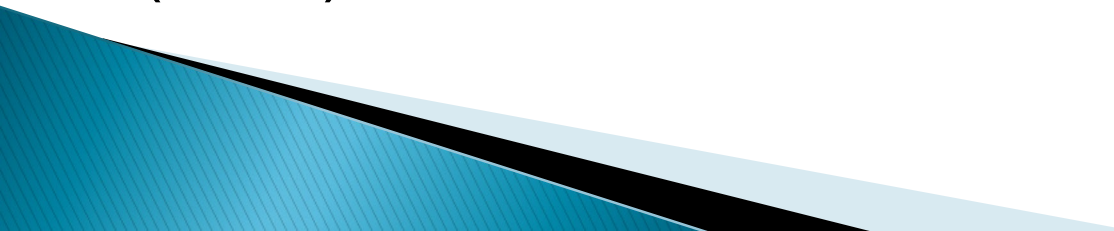
<https://www.disabilityrightsca.org/>

Introduction to OCRA

The Office of Clients Rights' Advocacy (OCRA) is a program of Disability Rights California.

Disability Rights California is a non-profit organization, and is the agency designated under federal law to protect and advocate for the rights of Californians with disabilities.

OCRA is funded through a contract with the California Department of Developmental Services (DDS).



Introduction to OCRA

OCRA advocates on behalf of people with developmental disabilities who are clients of the 21 regional centers across the state.

See <https://www.dds.ca.gov/rc/listings/> for a list of all the regional centers.

This includes:

- People currently receiving regional center services

- People seeking eligibility to receive regional center services.

Introduction to OCRA

Clients' Rights Advocates (CRA) and Assistant/Associate Clients' Rights Advocates (ACRA) are trained to advocate for people with developmental disabilities.

OCRA can:

- Provide information on your legal rights.

- Review documents and advise you on how to resolve your issue.

- Help you prepare for an upcoming meeting or hearing.

- Assist in preparing documents to ensure compliance with the law.

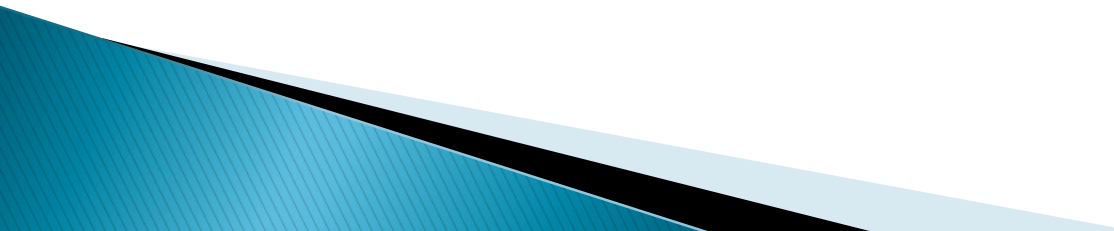
- Provide trainings for clients, families, and service providers.

- Represent you at a meeting or administrative hearing.

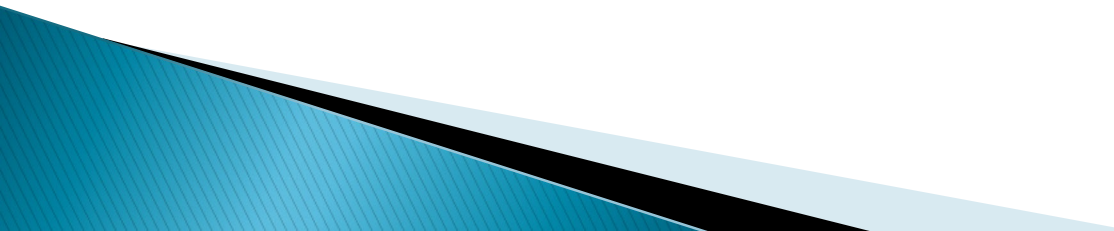


Disclaimer

This is a group presentation, so please do not share any private or confidential information. There is no right of confidentiality for anything discussed during this presentation. We are mandated reporters and must report suspected abuse and neglect of disabled adults. This presentation is not a private consultation for legal advice and no attorney-client relationship is formed between you and the Office of Clients' Rights Advocacy. If you have an individual question to ask us, please call our office for an intake appointment or give us your name and number today and someone will call you back.



Agenda

- Overview of Conservatorships
 - Alternatives to Conservatorships
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Conservatorship

The court appoints someone to make decisions for another person.

Takes fundamental rights away from that person.

Applies to people over the age of 18.

Lasts until court terminates it, or another event.



Conservatorship – Types

Limited Conservatorship

Probate Code

General Conservatorship of the Person

General Conservatorship of the Estate

Lanterman-Petris-Short (LPS) Act



Recent Changes

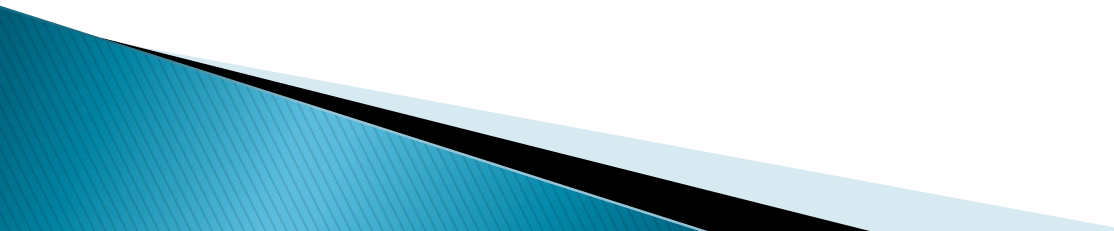
Assembly Bill 1663:

The Probate Conservatorship Reform and Supported Decision-Making Act.

https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220AB1663

1. Deflect: Recognize alternatives
2. Divert: Identify less-restrictive options
3. Dissolve: Makes ending conservatorship easier
4. Decide: Ensures choice

Supported Decision Making

- ▶ Supported Decision-Making (SDM) is when a person uses trusted friends, family and professionals to help them understand situations and choices in their life. It is a way to increase their independence. It encourages the person and gives them the power to make decisions about their life as much as possible. SDM is how most adults make daily decisions.
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Conservatorship – Vocabulary

Conservatorship vs. Guardianship:

In California, “guardianship” is for minors, not adults.

In California, “conservatorship” is for adults.

Conservatorship Order:

Appoints the conservator

Tells you who is the conservator

Does not tell you which powers the court granted.

Letters of Conservatorship:

Defines the powers of the conservator.

Tells you who is the conservator.

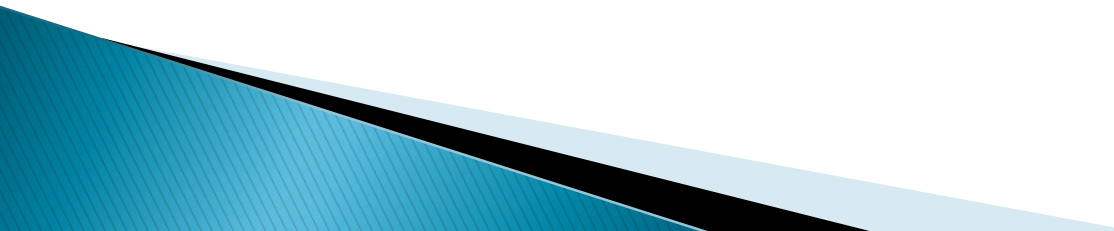
Tells you which powers the court granted.

Conservatorship – Capacity

The law presumes that all people are capable of exercising their rights as adults.

“all persons have the capacity to make decisions and to be responsible for their acts or decisions”

“a person who has a mental or physical disorder may still be capable of contracting, conveying, marrying, making medical decisions, executing wills or trusts, and performing other actions”



Conservatorship – Rights

Control own salary

Make or change a will

Receive personal mail

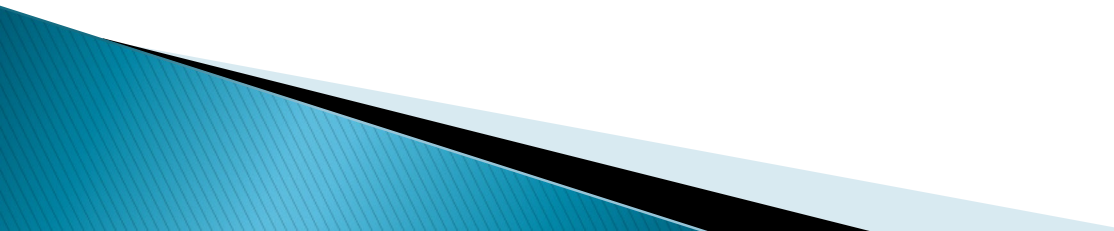
Be represented by an attorney

Ask for a different conservator

Ask for the conservatorship to end

Vote – subject to restriction by court

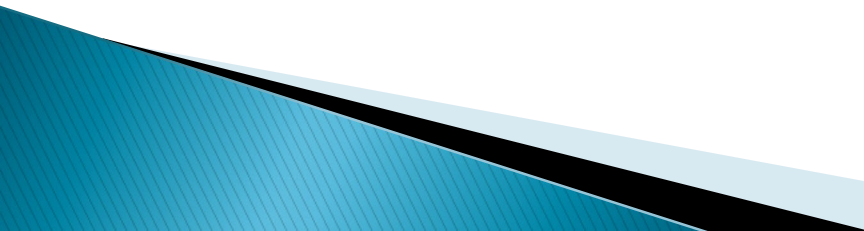
Powers of a Limited Conservatorship

- ▶ Determine residence.
 - ▶ Access to confidential records.
 - ▶ Control right to marry.
 - ▶ Control right to contract.
 - ▶ Consent for medical treatment.
 - ▶ Control social and sexual contacts.
 - ▶ Make educational decisions.
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LPS Conservatorships

- ▶ May be established on individuals who are gravely disabled as a result of mental disorder or impairment by chronic alcoholism and are unwilling or incapable of accepting treatment on a voluntary basis.

Conservatorship – Process

1. Petitioner (proposed conservator) files a petition with the probate court.
 2. Petitioner sends copies of the petition to the respondent (proposed conservatee), certain relatives, and agencies.
 3. The Court Investigator interviews the proposed conservatee.
 4. For a limited conservatorship, the Regional Center sends the court a report.
 5. Court conducts a hearing.
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Conservatorship – Process

Proposed conservatee has the right to:

Notice.

Oppose the petition.

Be represented by an attorney.

Be present at the hearing.

A jury trial.

Call witnesses to testify at hearing or trial.

Terminating a Conservatorship

General Conservatorship:

Death of the conservatee.

Order of the court.

Limited Conservatorship:

Death of the conservator.

Death of the conservatee.

Order appointing a general conservator.

Order restoring conservatee's rights.

Myth Busters

Myth

A conservatorship is the only way a parent can stay involved in their child's life.

Reality

As we will discuss later, there are other less restrictive ways a parent can remain involved in their child's life. This includes general alternatives such as Supported Decision-Making and Durable Power of Attorney.

Myth Busters, cont'd

Myth

If parents don't conserve their adult child, they cannot attend IEP meetings anymore.

Reality

The student has the discretion to invite anyone to the meeting who has knowledge or special expertise about them. This can include their **parents**, an advocate, friend, regional center case manager (service coordinator) or attorney.

Myth Busters, cont'd

<u>Myth</u>	<u>Reality</u>
<p>If parents don't conserve their child, they will lose all say in the educational decision making when their child turns 18.</p>	<p>It is true that when a student reaches 18 years old, they will assume authority over their educational decisions. Parents can remain involved if their child chooses to sign an "Assignment of Educational Decision Making," authorizing their parents to make a variety of decisions about the student's education.</p>

Myth Busters, cont'd

Myth

Conserving an adult child is the only way to keep them safe.

Reality

Many parents mistakenly believe a conservatorship is the only way they can protect their adult child with a disability. Conservatorship offers no guarantees that a person with a disability won't be taken advantage of by financial scams. It affords no extra protection against physical or sexual abuse. Conservatorship provides no extra legal protection if an adult with a disability is arrested by the police.

Myth Busters, cont'd

<u>Myth</u>	<u>Reality</u>
<p>Parents who have already started the process of conserving their adult child are no longer able to stop this process.</p>	<p>Conservatorship is created at a court hearing. If you haven't had the conservatorship hearing yet, you can stop the process. Even if you have a hearing date, it's not too late. You have the option to just not show up to the hearing.</p>

ALTERNATIVES

Why?

Conservatorship is supposed to be the exception, not the rule.

“Protection” by conservatorship is an illusion.

Unintended consequence of conservatorship.

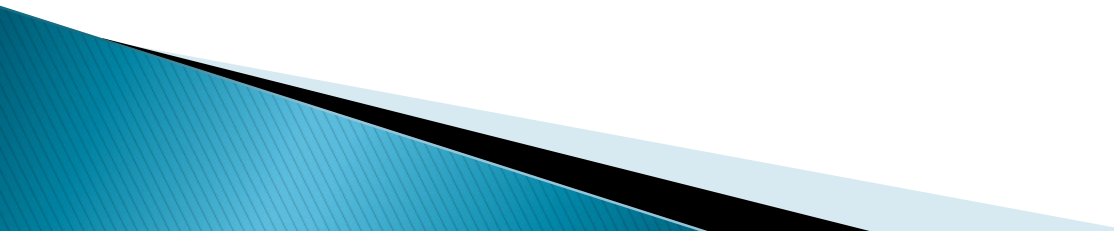


ALTERNATIVES

Supported Decision-Making

Using trusted friends, family, and professionals to help understand situations and choices.

“A series of relationships, practices, arrangements, and agreements, of more or less formality and intensity, designed to assist an individual with a disability to make and communicate to others decisions about the individual’s life.”



ALTERNATIVES

Supported Decision-Making

With Support and Without the Court: Supported Decision-Making Handbook for Parents of Adults with Developmental Disabilities in California.

www.disabilityvoicesunited.org/supported-decision-making

ALTERNATIVES

Educational Decisions

Transfer of Educational Decision Making Authority
Education Code section 56041.5

Durable Power of Attorney

Individual Program Plan for Regional Center
Clients



ALTERNATIVES

Educational Decisions – Tool for Educators

OSERS Transition Guide

<https://sites.ed.gov/idea/idea-files/policy-guidance-transition-guide-postsecondary-education-employment-students-youth-disabilities-august-2020/>

Parent Training and Information Centers

Parents Helping Parents

<http://www.php.com>

ALTERNATIVES

Access to Confidential Records

Durable Power of Attorney

Probate Code section 4400

Written Consent for Release of Information

HIPAA Release for Medical Records

- Consumer and person helping him/her can contact agencies together (i.e. 3-way phone call)

ALTERNATIVES

Contracts and Finances

Power of Attorney

For finances and is revocable

Probate Code sections 4400 to 4409

Representative Payee for Social Security

Services in the IPP to assist with money management

Special Needs Trust

Joint Bank Account

ALTERNATIVES

Contracts and Finances

ABLE Account

Can contribute \$16,000 per year.

Does not affect SSI eligibility unless/until account exceeds \$100,000.

Never affects Medicaid/Medi-Cal eligibility.

Minimum contribution \$25 to open, maximum balance is \$529,000.

See www.CalABLE.ca.gov for more information.

ALTERNATIVES

Medical Treatment

Educate healthcare providers. Can the person consent to some health care services?

Closest relation available (e.g. parent) can authorize healthcare.

Durable Power of Attorney for Health Care

Revocable

Requires two witness' signatures or notarization. (Probate Code sections 4600 to 4753)

ALTERNATIVES

Medical Treatment

Regional Center authorization for medical, surgical, or dental care. (W&I Code § 4655)

Emergency medical procedures

Court authorization for specific operations

Facility requirements to authorize medical interventions



ALTERNATIVES

Medical Treatment

Office of Developmental Primary Care at UCSF:
<https://odpc.ucsf.edu/advocacy/supported-health-care-decision-making>

<https://odpc.ucsf.edu/clinical/patient-centered-care>

CA Coalition for Compassionate Care:

<https://coalitionccc.org/tools-resources/people-with-developmental-disabilities/>

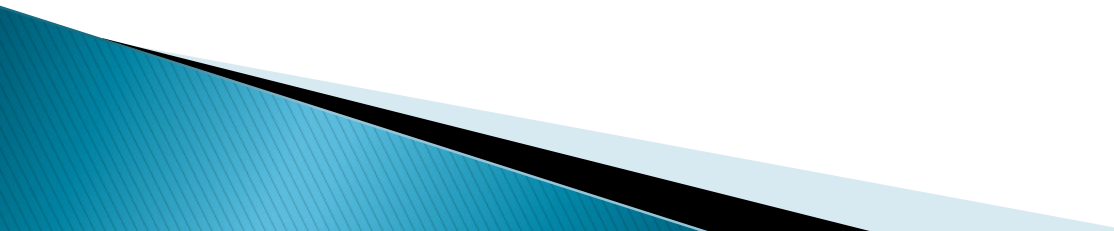
ALTERNATIVES

Determine Place of Residence

Supported Living Services

Independent Living Services

Circle of Support



Helpful resources:

- ▶ **Disability Voices United**, Supported Decision-Making Handbook for parents:
 - https://disabilityvoicesunited.org/wp-content/uploads/2020/11/SDM-Handbook_Oct2020.6.pdf
- ▶ **Disability Rights California**, Publication on Limited Conservatorships & Alternatives:
 - <https://www.disabilityrightsca.org/publications/limited-conservatorships-alternatives>
- ▶ **Disability Rights California**, Assignment of Educational Decision-Making Authority Template:
 - <https://serr.disabilityrightsca.org/serr-manual/appendix/p-assignment-of-educational-decision-making-authority-california-education-code-section-56041-5/>

Contact Information

For a regional center client, or a family member or advocate for a regional center client, call the local OCRA office.

Central Valley Regional Center Office of Clients' Rights Advocacy

567 West Shaw Ave., Suite C-3

Fresno, CA 93704

Phone: (559) 271-6736

Evelyn Cortes, Clients' Rights Advocate

Brenda Vang, Assistant Clients' Rights Advocate

Contact Information

For an individual, family member, or advocate for someone with a disability who is **not** a regional center client (and is not trying to become a regional center client), call DRC's intake number.

1-800-776-5746

Weekdays 9:00 AM to 3:00 PM (except Wednesdays)

www.disabilityrightsca.org



OCRA Contact Information

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Resources on many disability topics:

<https://www.disabilityrightsca.org/publications>